

APPENDIX

Supreme Court, U. S.
FILED

JUL 26 1978

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States
OCTOBER TERM, 1978

No. 77-1387

THE FEDERAL OPEN MARKET COMMITTEE
OF THE FEDERAL RESERVE SYSTEM,

Petitioner

—v.—

DAVID R. MERRILL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED MARCH 29, 1978
CERTIORARI GRANTED MAY 22, 1978

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1387

THE FEDERAL OPEN MARKET COMMITTEE
OF THE FEDERAL RESERVE SYSTEM,

Petitioner

—v.—

DAVID R. MERRILL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
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DAVID R. MERRILL
JOHN A. JENKINS

v.

FEDERAL OPEN MARKET COMMITTEE
OF THE FEDERAL RESERVE SYSTEM
RELEVANT DOCKET ENTRIES

DATE NR.

1975

May 08 COMPLAINT; Appearance; Exhibits A, B, C & D.

May 08 SUMMONS Copies (3) and Copies (3) of Complaint issued. (U.S. Atty. Ser. 5-12, AG Ser. 5-9-75 (Deft. Ser. 5-15)

Jun. 9 ANSWER of deft. to complaint; c/m 6-9-75.

Jun. 9 CALENDARED CD/N.

Sept. 24 MOTION of plaintiffs for summary judgment; affidavits; appendixs A & B; statement of material facts; P & A; Exhibit A c/s 9-24-75.

Oct. 8 MOTION by deft. for enlargement of time to file opposition to motion for summary judgment; P&A; c/s 10-7-75.

Oct. 20 STIPULATION dismissing without prejudice the second claim in complaint extending time to 10-24-75 for deft. to file opposition to motion for summary judgment. APPROVED. (N) Waddy, J.

Oct. 24 MOTION by defts. for summary judgment; Exhibits A thru G; c/m 10-24.

Oct. 24 STATEMENT by defts. of material facts as to which there is no dispute; c/m 10-24.

Oct. 24 OPPOSITION by defts. to pltffs. statement of material facts which are not in issue; c/m 10-24.

Oct. 24 STATEMENT of P & A's by defts. in support of motion for summary judgment and in opposition to pltffs. motion for summary judgment; attachments A & B; c/m 10-24.

DATE NR.

1975

Nov. 6 STIPULATION extending time to 11-10-75 for Pltff to respond to motion for summary judgment, approved. (N)

Nov. 10 MEMORANDUM of pltf. in opposition to deft's motion for summary judgment; Appendix "A"; c/m 11/10/75.

Nov. 10 RESPONSE of pltf. to deft's statement of material facts which are not in issue; c/m 11/10/75.

Dec. 24 REPLY Memorandum of deft.; c/m 12/24/75.

1976

Jan. 20 SUPPLEMENT of deft. to motion for summary judgment; Supplemental Affidavit of Arthur L. Broids; c/m 1/20/76.

Jan. 29 CROSS-motions for summary judgment, heard and granted as to pltf.; Oral motion of deft. for stay, heard and denied; pltf. has 7-days to file memorandum on counsel fees; deft. has 5-days to respond. (OTBP) (Rep: V. Marshall) WADDY,J.

Jan. 30 SUGGESTION by deft. of entry of proposed order by deft.; attachment; c/s 1-30-76.

Jan. 29 TRANSCRIPT of proceedings of 1-29-76, pp. 1-36; Rep: V. Marshall.

Feb. 03 MOTION of deft. to amend findings; P&A's; c/s 2-3-76.

Feb. 05 MEMORANDUM of pltf. in reply to motion of deft. to amend findings; c/s 2-5-76.

Feb. 05 MOTION of pltf. for award of reasonable attorney fees and litigation costs; affidavits (2); P&A's; c/s 2-5-76.

(1)

DATE NR.

1976

Feb. 12 MEMORANDUM of deft. in opposition to motion of pltf. for award of reasonable attorney fees and litigation costs; exhibits A-C; c/m 2-12-76.

Feb. 25 SUPPLEMENT to motion of deft. to amend findings; affidavit of Robert C. Holland; c/m 2-25-76.

Feb. 27 RESPONSE of pltf. to supplement by deft. to motion of deft. to amend findings; c/m 2-27-76.

Mar. 09 MEMORANDUM Opinion. (N) WADDY,J.

Mar. 09 ORDER and Judgment granting motion of pltf. for summary judgment; denying motion of deft. for summary judgment; directing defts. to submit for in camera inspection within 10-days non-segregable memorandum of discussion; denying motion of deft. to amend findings; granting motion of deft. to stay as far as Paragraphs 5, 6, 7 & 8 of this order; holding in abeyance prayer of pltf. for counsel fees pending disposition of appeal. (N) (See order for details) WADDY,J.

Mar. 16 NOTICE of Appeal by deft. from Order of 3-9-76. Copy mailed to Victor H. Kramer. No fee—U.S. Govt.

Mar. 18 MOTION by deft. for enlargement of time; P&A's; c/m 3-18.

Mar. 19 SUPPLEMENT by deft. to motion of deft. for enlargement of time; c/m 3-19-76.

Mar. 22 ORDER filed 3-19-76 granting motion of deft. extension of time to comply with Paragraph 10 of order of 3-9-76 to 3-24-76. (N) WADDY,J.

Mar. 24 REPORT by deft. to the Court; affidavit of Arthur L. Broida; exhibits A & B to affidavit of Broida filed in camera; c/m 3-24-76.

Apr. 05 MEMORANDUM of pltf. in response to report of deft. to the Court; c/m 4-5-76.

DATE NR.

1976

Apr. 22 RECORD on Appeal delivered USCA; receipt acknowledged (#76-1379).

Aug. 02 ORDER filed 7-30-76 directing parties to appear for hearing on August 11, 1976 at 11:00 A.M. in re in camera submissions and motion of pltf. for attorneys fees. (N) WADDY,J.

Aug. 06 STATUS HEARING: re *in camera* submissions and attorney's fees set for 11:00 A.M. on August 11, 1976 continued until 10:00 A.M. on September 28, 1976. (Rep: Vernell Marshall) WADDY,J.

Oct. 06 ORDER filed 10-5-76 directing deft. to release memorandum of discussion of January 20 & 21, 1975 and February 19, 1975 within 10-days. (N) WADDY,J.

Oct. 15 NOTICE of Appeal by deft. from Order of 10-5-76. Copy mailed to Victor H. Kramer. No fee—U.S. Govt.

Oct. 15 MOTION by deft. for stay of Order of 10-5-76; P&A's exhibit A; c/m 10-15-76.

Oct. 19 MEMORANDUM of deft. concerning motion of deft. for stay; c/m 10-19-76.

Oct. 26 ORDER filed 10-22-76 granting motion of deft. for stay; staying order of 10-5-76 pending appeal. (N) WADDY,J.

Nov. 19 RECORD on Appeal delivered USCA; receipt acknowledged (#76-2047).

1977

Jan. 19 CERTIFIED copy Order USCA granting joint motion to remand the record and the record herein is remanded to the USDC; Clerk of the District Court is requested to promptly return the record to this Court upon completion of the remand proceedings.

DATE NR.

1977

Jan. 19 LETTER from George A. Fisher to James F. Davey remanding certified original record to USDC. (Jacket submitted to Judge Waddy 1-24-77)

Mar. 18 JOINT Report to the Court; exhibits A & B.

Mar. 23 STIPULATION and ORDER filed 3-22-77 striking second prayer for relief with prejudice and without prejudice to pltf. to obtain an award for costs in re any portion of complaint. (N) WADDY,J.

Mar. 24 SUPPLEMENTAL Record on Remand & Return of Original Record to USCA; receipt acknowledged (#76-2047).

Apr. 21 CERTIFIED copy ORDER USCA dismissing appeal.

May 9 ORDER filed May 6, 1977 directing *sua sponte* that the parties shall, on or before 5-20-77, file; memoranda of law and setting case for hearing on motion of pltff. for award of reasonable attorney fees & litigation costs on 6-1-77 at 10:00 A.M. (N) Waddy,J.

May 19 MOTION by deft. to amend order of May 5, 1977; c/m 5-19-77.

May 19 MEMORANDUM of Law by pltfs. on attorney fees in response to the Court's request of May 5, 1977; attachments (2); c/m 5-19-77.

May 23 ORDER filed 5-20-77 extending time to 15-days after decision in USCA 76-1379 for defts. to file brief as directed in order of 5-5-77; vacating status call set for 6-1-77. (N) WADDY,J.

July 20 TRANSMITTAL Sheet from USCA returning to USDC the original record (remaining papers) and one supplemental record containing remand proceedings.

Nov. 25 MEMORANDUM of deft. in response to order of May 5, 1977; c/m 11-25-77.

DATE NR.

1977

Dec. 01 RESPONSE of pltf. to memorandum of deft. in opposition to motion of pltf. for award of reasonable fees and litigation costs; c/m 12-1-77.

1978

Feb. 24 Copy of Order USCA granting motion of appellant for further stay of mandate and the Clerk is directed not to issue the mandate in this case prior to March 13, 1978.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0736

DAVID R. MERRILL
1454 North Beauregard Street
Alexandria, Virginia 22311
703-671-2894, and

JOHN A. JENKINS
7515 Hogarth Street
North Springfield, Virginia 22151
703-256-8248, PLAINTIFFS

v.

FEDERAL OPEN MARKET COMMITTEE
OF THE FEDERAL RESERVE SYSTEM
20th and Constitution Avenue, N.W.
Washington, D.C. 20551, DEFENDANT

COMPLAINT

This suit for declaratory and injunctive relief is brought under the Freedom of Information Act ("FOIA") and the Administrative Procedure Act. It seeks an order prohibiting the enforcement by defendant Federal Open Market Committee of the Federal Reserve System ("FOMC") of 12 C.F.R. § 271.5, which provides for delays in the public disclosure of nonexempt FOMC records, and an order requiring defendant FOMC to make available the memoranda of discussion of certain FOMC meetings.

JURISDICTION AND VENUE

1. This Court has jurisdiction of this action pursuant to the provisions of 5 U.S.C. § 552, 5 U.S.C. §§ 701-706, and 28 U.S.C. § 1361, and is empowered to give relief by those statutes and additionally by 28 U.S.C. § 2201, 2202.

2. Defendant FOMC is found in the District of Columbia, and the agency records sought are situated in the District of Columbia.

PARTIES

3. Plaintiff David R. Merrill is a law student at Georgetown University Law Center and a member of the Institute for Public Interest Representation which has offices at 600 New Jersey Avenue, N.W., Washington, D.C. 20001. He resides in Alexandria, Virginia, and is a person within the meaning of 5 U.S.C. § 551(2). Plaintiff Merrill, in his course of studies at the Institute, has developed a strong interest in administrative law and the operation of agencies of the federal government. His course of study now is devoted exclusively to these two subjects, and he intends to continue this study throughout his professional career. In particular, plaintiff Merrill is attempting to study and desires to study the current operations of defendant FOMC. He is interested in studying the process by which the FOMC regulates the national money supply through the frequent adoption of domestic policy directives and is particularly interested in how and to what extent current economic and financial factors are taken into consideration by the FOMC in the adoption of its domestic policy directives and other policy actions.

4. Plaintiff John Jenkins resides in North Springfield, Virginia, and is a person within the meaning of 5 U.S.C. § 551(2). Plaintiff Jenkins is a Washington reporter covering financial and economic affairs, including the policies of defendant FOMC and its forecasts of economic activity. As a professional journalist regularly reporting on current national economic affairs, plaintiff Jenkins has a strong interest in and a continuing and immediate need for information about the present activities of defendant FOMC as it directs national monetary policy.

5. Defendant FOMC is an agency of the United States government within the meaning of 5 U.S.C. § 551(1) and of 5 U.S.C. § 552(e) and is located in the District of Columbia.

FIRST CLAIM FOR RELIEF

As a first claim for relief, plaintiff Merrill alleges the following:

6. By letter dated and delivered on March 7, 1975, plaintiff Merrill requested defendant FOMC, pursuant to the FOIA, to provide him with access to the following reasonably described records in its possession:

(a) records of policy actions taken by the Federal Open Market Committee at its meetings in January 1975 and February 1975, including, but not limited to, instructions to the Manager of the Open Market Account and any other person relating to the purchase and sale of securities and foreign currencies, and

(b) memoranda of discussion at the above meetings.

A copy of this letter is attached hereto as Exhibit A.

7. By letter dated March 21, 1975, and signed by Arthur L. Broida, Secretary to the FOMC, defendant FOMC denied plaintiff Merrill prompt access to the records described in paragraph 6. With regard to the records described in paragraph 6(a), the sole basis stated for the denial was defendant FOMC's "determination" that said records be made available to the public on a "time-delay basis." Defendant FOMC's regulation, 12 C.F.R. § 271.5, *as amended*, 40 Fed. Reg. 13204 (Mar. 25, 1975), provides for a 45-day delay in the release of records of this type. With regard to the records described in paragraph 6(b), the stated basis for denial was exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5). A copy of this letter, without enclosures, is attached hereto as Exhibit B.

8. By letter dated and delivered March 27, 1975, plaintiff Merrill appealed this denial pursuant to 12 C.F.R. § 271.4. In this letter plaintiff Merrill claimed that the bases for denial, as stated in paragraph 7, were legally insufficient; that delayed disclosure of the records described in paragraph 6(a) was unlawful under the FOIA; and that even if exemption 5 of the FOIA applied to some portions of the records described in paragraph 6(b),

the nonexempt portions of those records were required to be disclosed. A copy of this letter is attached hereto as Exhibit C.

9. By letter dated April 23, 1975, and signed by Robert C. Holland, a member of the Board of Governors of the Federal Reserve System and a member of defendant FOMC, defendant FOMC responded to plaintiff Merrill's appeal. Defendant FOMC provided plaintiff Merrill with copies of the records requested in paragraph 6(a), 45 days now having elapsed since the dates of the January and February 1975 FOMC meetings. Defendant FOMC stated that the delay in disclosure of these and similar records was "founded upon a legislative policy against premature disclosures which would impair the effectiveness of the operations of Government agencies." With regard to the records requested in paragraph 6(b), defendant FOMC affirmed its initial denial of access pursuant to exemption 5 of the FOIA, 5 U.S.C. § 552 (b)(5), and further stated that these records contained no factual materials which were required to be segregated and disclosed. A copy of this letter, without enclosures, is attached hereto as Exhibit D.

10. 12 C.F.R. § 271.5, insofar as it provides that the records, or any part thereof, of policy actions of defendant FOMC may or shall be withheld from public disclosure for a period of approximately 45 days after the date of adoption, is in contravention of the FOIA and is therefore invalid.

11. Defendant FOMC's practice of releasing on a time-delay basis records of policy actions of the FOMC violates the FOIA's requirement of prompt disclosure. 5 U.S.C. § 552(a)(3).

12. Defendant FOMC's denial of plaintiff Merrill's request for access to the records described in paragraph 6(b) is unlawful. The FOIA requires that some or all of said records be disclosed.

SECOND CLAIM FOR RELIEF

As a second claim for relief, plaintiffs Merrill and Jenkins allege the following:

13. Paragraphs one through five of this complaint are incorporated herein by reference.

14. Plaintiff Merrill is aggrieved and injured in his course of study of current FOMC operations by defendant FOMC's regulation, 12 C.F.R. § 271.5, insofar as it provides for a 45-day delay in the release of records of policy actions of defendant FOMC, and by defendant FOMC's practice of releasing said records on a time-delay basis, as a result of which he is unable to obtain prompt access to said records.

15. Plaintiff Jenkins is aggrieved and injured as a reporter and journalist by defendant FOMC's regulation, 12 C.F.R. § 271.5, insofar as it provides for a 45-day delay in the release of records of policy actions of defendant FOMC and a delay in the release of other non-exempt FOMC records, and by defendant FOMC's practice of releasing said records on a time-delay basis, as a result of which he is unable to obtain prompt access to said records.

16. 12 C.F.R. § 271.5, insofar as it provides that the records, or any part thereof, of policy actions of defendant FOMC may or shall be withheld from public disclosure for a period of approximately 45 days and insofar as it provides that any other nonexempt FOMC records may be temporarily withheld from public disclosure, is in contravention of the FOIA and is therefore invalid.

17. Defendant FOMC's practice of releasing on a time-delay basis records of policy actions of the FOMC and other nonexempt FOMC records violates the FOIA's requirement of prompt disclosure. 5 U.S.C. § 552(a)(3).

PRAYER

WHEREFORE, having no adequate remedy at law, plaintiffs pray that this Court enter a judgment:

(1) declaring that 12 C.F.R. § 271.5, insofar as it provides for a delay in the public disclosure (a) of records of policy actions of defendant FOMC, and (b) of other nonexempt FOMC records, is in contravention of the FOIA and is therefore invalid;

(2) ordering defendant FOMC to make the records, or the nonexempt portions thereof, described in paragraph 6(b) promptly available to plaintiff Merrill;

(3) ordering defendant FOMC to cease enforcement of 12 C.F.R. § 271.5, insofar as that regulation provides for any delay in the public disclosure (a) of records of policy actions of defendant FOMC, and (b) of other nonexempt FOMC records, and promptly to disclose said records upon the request of any person; and

(4) granting such other and further relief, including reasonable attorney fees and other litigation costs of plaintiff Merrill in bringing this action, as may be just and proper.

/s/ Victor H. Kramer
VICTOR H. KRAMER

/s/ Richard B. Wolf
RICHARD B. WOLF

/s/ Charles E. Hill
CHARLES E. HILL

/s/ Robert C. Brown
ROBERT C. BROWN

Institute for
Public Interest Representation
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
624-8390

Counsel for Plaintiffs

EXHIBIT A

INSTITUTE FOR PUBLIC INTEREST
REPRESENTATION
GEORGETOWN UNIVERSITY LAW CENTER

March 7, 1975

FREEDOM OF INFORMATION ACT REQUEST

Secretary of the Board
Board of Governors of the
Federal Reserve System
Federal Reserve Building
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Dear Sir:

On behalf of David R. Merrill, a student at Georgetown University Law Center, we hereby request access, for purposes of inspection and copying, to the following:

(1) Records of policy actions taken by the Federal Open Market Committee at its meetings in January 1975 and February 1975, including, but not limited to, instructions to the Manager of the Open Market Account and any other person relating to the purchase and sale of securities and foreign currencies.

(2) Memoranda of discussion at the above meetings.

The Freedom of Information Act, 5 U.S.C. § 552(a) (6) (A) (i), requires that this request be determined within 10 working days. We note that the Federal Open Market Committee regulation, 12 C.F.R. § 271.5, states that the Open Market Committee's economic policy directives and related information will not be made available to the public for approximately 90 days after their adoption. In our opinion this part of this regulation violates the Act.

If responding to our request will result in our being assessed a fee in excess of twenty dollars, we ask that

you communicate with us before proceeding to respond to the request.

Sincerely,

/s/ Victor H. Kramer
VICTOR H. KRAMER
Director

[SEAL]

EXHIBIT B

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
Washington, D.C. 20551

March 21, 1975

Victor H. Kramer, Esq.
Director
Institute for Public Interest
Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C.

Dear Mr. Kramer:

This acknowledges your letter of March 7, 1975, which you state to be a "Freedom of Information Act request", wherein you ask, on behalf of Mr. David R. Merrill, for access to the following documents:

- (1) Records of policy actions taken by the Federal Open Market Committee at its meeting in January 1975 and February 1975, including, but not limited to, instructions to the Manager of the Open Market Account and any other person relating to the purchase and sale of securities and foreign currencies.
- (2) Memoranda of discussion at the above meetings.

Regarding your request for records of policy actions for the meetings of January and February 1975, the Federal Open Market Committee has recently determined that all records of policy actions will be made available to the public on a time-delay basis substantially shorter than that currently applicable, namely, 90 days after the date of a meeting. Pursuant to this determination, the record of policy actions for the Committee meeting of January 1975 will be available to the public, including Mr. Merrill, on Monday, March 24, 1975. The record of

policy actions with respect to the Committee's February 1975 meeting will be available to the public, including Mr. Merrill, on or about April 7, 1975. Both records will be the subject of a Federal Reserve press release and can be obtained on the dates mentioned at the Board's Public Affairs Office, Room 2121, 20th and Constitution Avenue, N.W., Washington, D.C.

As to Mr. Merrill's request for memoranda of discussion at the January and February 1975 meetings, it is the Committee's position that these memoranda are exempt from the disclosure requirements of the Freedom of Information Act, pursuant to 5 U.S.C. § 552(b)(5). This provision removes from the application of the Act "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The Committee is of the view that its conclusion as to the exempt status of its memoranda of discussion is firmly supported by the criteria of subsection (b)(5), the legislative history of the Act as originally enacted, and the Attorney General's memorandum on the Public Information Section of the Administrative Procedure Act, dated June 1967.

Notwithstanding the exempt status of the memoranda of discussion, the Committee has made such memoranda available to the public after a lapse of time deemed by the Committee sufficient to preclude serious adverse consequences attending premature release. Historically, memoranda of discussion for an entire year of Committee meetings are made available to the public in a single release. Thus, as exemplified in the enclosed Federal Reserve release of January 27, 1975, minutes of discussions and actions at the meetings of the Committee during 1969 were transferred to the National Archives on that date and simultaneously made available to the public, with the exception of certain deletions of matter identified in the minutes released. At present, the time lag for transfer to the National Archives is approximately five years following the close of the year in question. It should be noted that the lag period adopted is discretionary with the Committee and is subject to review

and change by that body. Any change in the present lag schedule would, of course, be made known by appropriate press release action accompanying transfer of the memoranda to the National Archives. As such transfer is made, the material in question is simultaneously available at the Board's office and the Federal Reserve Bank of New York.

Appropriate at this point would be a brief reference to the Committee's rationale for deferring for a substantial period release of the memoranda of discussion. The imposition of such time lag is premised, in part, upon the following considerations:

- (1) A need to bring into the decision-making processes of the Committee uninhibited expression of the broadest range of individual opinions and advice. In every area of Federal Government operation—executive, legislative and judicial, the principle is widely recognized that internal deliberations, including intra-organizational advisory opinions, recommendations, exchanges of member and staff views and related functional advices, must, in the public interest, be held confidential, or subject to release in the discretion of the organization concerned. Otherwise, there would result a destructive diminution of candor on the part of the participating officials and employees in speaking their minds freely and uninhibitedly.
- (2) A need to preclude those sophisticated in market analysis and speculators from gaining unfair profits or obtaining unfair advantages by trading transactions in securities or foreign exchange, particularly subjects having long-term implications;
- (3) Prevention to the extent possible, of any interference with the orderly execution of policies or objectives of other government agencies concerned with domestic or foreign economic or fiscal matters;
- (4) A need to preclude, to the extent possible, interference with or impairment of ongoing or prospective financial transactions with foreign banks,

bankers or countries that could have both immediate and long-term critical impact or influence on the flow of gold and of dollar balances to or from foreign countries. Particularly relevant to the last mentioned consideration is the fact that memoranda of discussion of Committee meetings frequently contain sensitive references to or statements by or about foreign governments and foreign central banks. Equally supportive of the time lag applied to memoranda of discussion are the references therein to known or anticipated domestic fiscal policy actions, congressional programs, and related governmental action information, the premature publication of which could cause disruptions in financial markets.

In summary, it is the Committee's view that the content, volume, and timing of its publications exceed those of any other central bank. The Committee's position with respect to the exempt status of memoranda of discussion is believed to be wholly supported by the provisions of the Freedom of Information Act, its legislative history, and the Attorney General's manual accompanying that Act. As to the Committee's voluntary action in not wholly relying on the exemption status attributable to such memoranda, the Committee's experienced judgment as to an appropriate time lag for availability, has been determined critically necessary for the reasons above set forth. Any appeal of the foregoing decision that Mr. Merrill may find it necessary to pursue, may be initiated by following the procedures set forth in the enclosed copy of § 271.4(c)-(f) of the Federal Open Market Committee Rules Regarding Availability of Information which were recently amended and became effective on February 19, 1975.

Sincerely yours,

/s/ Arthur L. Broida
 ARTHUR L. BROIDA
 Secretary
 Federal Open Market Committee

Enclosures

EXHIBIT C

INSTITUTE FOR PUBLIC INTEREST
 REPRESENTATION
 GEORGETOWN UNIVERSITY LAW CENTER

March 27, 1975

FREEDOM OF INFORMATION ACT APPEAL

Mr. Arthur L. Broida, Secretary
 Federal Open Market Committee
 Federal Reserve Building
 20th Street and Constitution Avenue, N.W.
 Washington, D.C. 20551

Dear Mr. Broida:

This letter is an appeal pursuant to the Freedom of Information Act ("FOIA"), as amended, 5 U.S.C. § 552, and the relevant Federal Open Market Committee ("FOMC") regulations, 12 C.F.R. § 271.4, 40 Fed. Reg. 7897. By letter dated March 7, 1975, we requested, on behalf of David R. Merrill, prompt access to certain specified records of the FOMC. You denied our request in a letter dated March 21, 1975. Because we believe your decision to be in contravention of the FOIA, we ask that you reverse it.

As to the request for the records referred to in paragraph (1) of our March 7 letter, the FOIA requires that agency records requested by any person be made "promptly available." 5 U.S.C. § 552(a)(3). Only if the requested records fall within one of the exemptions set forth in the FOIA may the agency decline to disclose them. Because there were no exemptions claimed for these records in your letter of March 21, we believe that the decision not to make them promptly available was in violation of the FOIA. In addition, we note that the FOIA provides no authority for the FOMC's policy of delaying disclosure of nonexempt records.*

* The Board recently changed the period of delay from "approximately 90 days" to "approximately 45 days." See 40 Fed. Reg. 13204 (March 25, 1975).

Regarding the request for the records enumerated in paragraph (2) of our letter, you determined that these records were exempt from disclosure under exemption 5. 5 U.S.C. § 552(b)(5). In our judgment, the requested records do not fall within exemption 5. Even if you believe some of the requested material to be exempt, however, the nonexempt records and portions of records must be segregated and made promptly available to Mr. Merrill, and the withheld material must be described in detail. *See* 5 U.S.C. § 552(b); *Mink v. EPA*, 410 U.S. 73, 87-93 (1973).

We thank you for your prompt attention to this appeal.

Sincerely,

/s/ Victor H. Kramer
VICTOR H. KRAMER
Director

[Received March 27, 1975, 12:40 a.m., Arthur L. Broida]

EXHIBIT D

[SEAL]

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
Washington, D.C. 20551

April 23, 1975

Victor H. Kramer, Director
Institute for Public Interest Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001

Dear Mr. Kramer:

This refers to your letter dated March 27, 1975, on behalf of Mr. David R. Merrill, which appeals a denial of your request pursuant to the Freedom of Information Act (the "Act") (5 U.S.C. § 552) for the following documents:

- (1) Records of policy actions taken by the Federal Open Market Committee at its meetings in January 1975 and February 1975, including, but not limited to, instructions to the Manager of the Open Market Account and any other person relating to the purchase and sale of securities and foreign currencies.
- (2) Memoranda of discussion at the above meetings.

In response to your request for information in category (1), please find enclosed copies of all those materials which you request. Please note that the deferment of availability of such materials is founded upon a legislative policy against premature disclosures which would impair the effectiveness of the operations of Government agencies.

With respect to the information requested in category (2), I have received the response earlier conveyed to you in Mr. Broida's letter of March 21, 1975, and have determined to affirm that decision. Those materials to which you are denied access consist wholly of memoranda of

Committee discussion that have been accorded confidential treatment under exemption (b) (5) of the Act. There are no factual materials in these memoranda which are subject to the requirements imposed by *E.P.A. v. Mink*, 410 U.S. 73, 87-93 (1973). Therefore your request for information in category (2) is hereby denied.

This determination is a final Committee action with respect to this matter. Pursuant to section (a) (4) (B) of the Act, you are entitled to file a complaint for judicial review of this determination with the appropriate Federal district court. The undersigned is the person primarily responsible for the partial denial of the present request within the meaning of section (a) (6) (C) of the Act.

Very truly yours,

/s/ Robert C. Holland
ROBERT C. HOLLAND

Enclosures

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0736

DAVID R. MERRILL, *et al.*, PLAINTIFFS,

v.

THE FEDERAL OPEN MARKET COMMITTEE OF THE
FEDERAL RESERVE SYSTEM, DEFENDANT.

ANSWER

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

SECOND DEFENSE

Plaintiff Jenkins lacks standing to maintain this action.

THIRD DEFENSE

Plaintiff Merrill lacks standing to maintain the action specified in Plaintiffs' second claim for relief.

FOURTH DEFENSE

Plaintiffs Merrill and Jenkins have failed to state a claim upon which relief can be granted.

FIFTH DEFENSE

Answering specifically the numbered paragraphs of the complaint, the defendant pleads as follows:

1. This paragraph sets forth conclusions of law and not allegations of fact for which an answer is required, but, insofar as an answer may be deemed required, it is denied.

2. Denied, except to admit that the Federal Open Market Committee is found in the District of Columbia and that the documents here sought also are situated in the District of Columbia.

3, 4. Denied for the lack of knowledge or information sufficient to form a belief as to the truth of the allegations therein.

5. This paragraph sets forth conclusions of law and not allegations of fact for which an answer is required, but, insofar as an answer may be deemed required, it is denied, except to admit that the Federal Open Market Committee is located in the District of Columbia.

6. Denied, except to admit the authenticity of Exhibit A to the Complaint to which the Court is respectfully referred for the complete and accurate terms thereof.

7. Denied, except to admit the authenticity of Exhibit B to the Complaint to which the Court is respectfully referred for the complete and accurate terms thereof. The Court is also respectfully referred to the regulatory provisions cited for the complete and accurate terms of such provisions.

8. Denied, except to admit the authenticity of Exhibit C to the Complaint to which the Court is respectfully referred for the complete and accurate terms thereof.

9. Denied except to admit the authenticity of Exhibit D to the Complaint to which the Court is respectfully referred for the complete and accurate terms thereof.

10, 11, 12. These paragraphs set forth conclusions of law and not allegations of fact for which an answer is required, but, insofar as an answer may be deemed required, they are denied.

13. As this paragraph incorporates by reference Paragraphs 1 through 5 of the Complaint, the Court is respectfully referred to the Defendant's answers to Paragraphs 1 through 5 of the Complaint.

14, 15. Denied.

16, 17. These paragraphs set forth conclusions of law and not allegations of fact for which an answer is required, but, insofar as an answer may be deemed required, they are denied.

All allegations not hereinbefore admitted or denied, are denied.

Respectfully submitted,

REX E. LEE
Assistant Attorney General

EARL J. SILBERT
United States Attorney

ANN S. DE ROSS
Assistant United States Attorney

HARLAND F. LEATHERS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0736

DAVID R. MERRILL, ET AL., PLAINTIFFS

v.

FEDERAL OPEN MARKET COMMITTEE OF THE
FEDERAL RESERVE SYSTEM, DEFENDANT

PLAINTIFFS' STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE

Plaintiffs hereby set forth the following material facts as to which there is no genuine issue:

1. By letter dated and delivered on March 7, 1975, plaintiff Merrill requested defendant FOMC, pursuant to subsection (a) (3) of the FOIA, 5 U.S.C. § 552, to provide him with access to the following reasonably described records in its possession:

(a) records of policy actions taken by the Federal Open Market Committee at its meetings in January 1975 and February 1975, including, but not limited to, instructions to the Manager of the Open Market Account and any other person relating to the purchase and sale of securities and foreign currencies, and (b) memoranda of discussion at the above meetings.

Complaint, Exhibit A; Answer ¶ 6.

2. By letter dated March 21, 1975, and signed by Arthur L. Broida, Secretary to the FOMC, defendant FOMC denied plaintiff Merrill prompt access to the records described in paragraph 1. With regard to the records described in paragraph 1(a), the sole basis stated for the denial was defendant FOMC's "determination" that said records be made available to the public on a "time-delay basis." Defendant's regulation, 12 C.F.R. § 271.5, *as amended*, 40 Fed. Reg. 13204 (March 25, 1975), provides for a 45-day delay in the release of records of this type. With regard to the records described in paragraph

1(b), the stated basis for denial was exemption 5 of the FOIA, 5 U.S.C. § 552(b) (5). Complaint, Exhibit B; Answer ¶ 7.

3. By letter dated and delivered March 27, 1975, plaintiff Merrill appealed this denial pursuant to 12 C.F.R. § 271.4. Complaint, Exhibit C; Answer ¶ 8.

4. By letter dated April 23, 1975, and signed by Robert C. Holland, a member of the Board of Governors of the Federal Reserve System and a member of defendant FOMC, defendant FOMC responded to plaintiff Merrill's appeal. Defendant FOMC provided plaintiff Merrill with copies of the records requested in paragraph 1(a), 45 days now having elapsed since the dates of the January and February 1975 FOMC meetings. Defendant stated that the delay in disclosure of these and similar records was "founded upon a legislative policy against premature disclosures which would impair the effectiveness of the operations of Government agencies." Defendant did not cite any exemption under subsection (b) of the FOIA, 5 U.S.C. § 552. With regard to the records requested in paragraph 1(b), defendant FOMC affirmed its initial denial of access pursuant to exemption 5 of the FOIA, 5 U.S.C. § 552(b) (5). Complaint, Exhibit D; Answer ¶ 9.

5. Plaintiff John Jenkins is a resident of North Springfield, Virginia, and a Washington reporter covering financial and economic news, including the policies of the defendant FOMC and its forecasts of economic activity. As a professional journalist regularly reporting on current national economic trends, he has a strong interest in and a continuing and immediate need for information about the present activities of the FOMC as it affects national monetary policy. Affidavit of John A. Jenkins.

6. Plaintiff John Jenkins has not filed a request under the FOIA with the defendant FOMC for records of policy actions adopted by the defendant Committee at its meetings in January 1975 and February 1975 or any subsequent meetings. Jenkins is aware of the defendant's regulation which requires a 45-day delay in the release of these records. Affidavit of John A. Jenkins.

7. Plaintiff Jenkins is, and at all times herein rele-

vant was, a reporter with a journalistic need for the prompt release of the records of policy actions adopted by defendant. He is injured in fact by the defendant's regulation requiring a 45-day delay in the release of the records of policy actions. Affidavit of John A. Jenkins.

8. The most recent publicly available memoranda of discussion of the FOMC meetings occurred in 1969. These memoranda contain many statements of fact easily segregable from expressions of opinion. Affidavit of Brian W. Bulger.

9. The memoranda of discussion for the years from 1970 to date have not been published and are not yet otherwise available to the public. Affidavit of Brian W. Bulger.

Respectfully submitted,

/s/ Victor H. Kramer
 VICTOR H. KRAMER
 RICHARD B. WOLF
 CHARLES E. HILL
 600 New Jersey Avenue, N.W.
 Washington, D.C. 20001
 624-8390

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 DISTRICT OF COLUMBIA

Civil No. 75-0736

DAVID R. MERRILL, ET AL., PLAINTIFFS

v.

FEDERAL OPEN MARKET COMMITTEE
 OF THE FEDERAL RESERVE SYSTEM

DEFENDANT'S STATEMENT OF MATERIAL FACTS
 AS TO WHICH THERE IS NO DISPUTE,
 PURSUANT TO LOCAL RULE 1-9(g)

1. By letter dated March 7, 1975 (Exhibit A of Plaintiff's Complaint), the Institute for Public Interest Representation at Georgetown University Law Center requested access to the following information on behalf of one David R. Merrill:
 - (a) Records of policy actions taken by the Federal Open Market Committee at its meetings in January 1975 and February 1975, including, but not limited to, instructions to the Manager of the Open Market Account and any other person relating to the purchase and sale of securities and foreign currencies.
 - (b) Memoranda of Discussion at the above meetings.
2. With respect to the Records of Policy Actions requested in paragraph (a), the Plaintiff was informed in a letter from Mr. Arthur L. Broida, Secretary of the FOMC, dated March 21, 1975 (Exhibit B of Plaintiff's Complaint) that such Records would be available on a recently-shortened time delay basis of approximately 45 days: the release dates for the January and February 1975 meetings would be March 24 and April 7, respectively. Mr. Broida also supplied the location for obtaining copies. The plaintiff appealed the deferred release time table to the Board by letter dated March 27, 1975 (Exhibit C of Plaintiff's Complaint). Full release of the

materials requested in paragraph (a) was made by the Board in a response dated April 23, 1975 (Exhibit D of Plaintiff's Complaint), since the 45-day period following the meetings at issue had elapsed and the materials were public knowledge.

3. With respect to the Memoranda of Discussion requested in paragraph (b), no release of this material has been made to date. At present, release of Memoranda is made only after five years, a lapse of time deemed sufficient by the FOMC to preclude serious adverse consequences attending premature release. Mr. Broida's March 21 response to Plaintiff, *supra*, set forth the FOMC's position that such Memoranda are exempt from the disclosure requirements of the Freedom of Information Act, 5 U.S.C. § 552(b)(5), as "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." In addition, Mr. Broida provided Plaintiff with an outline of policy reasons for the five-year delay in release. Mr. Holland upheld Mr. Broida's decision in an attached letter to Plaintiff dated April 23, 1975, *supra*.

Background and Functions of the Federal Open Market Committee ("FOMC")

4. The FOMC, composed of the members of the Board of Governors of the Federal Reserve System and representatives of five of the Reserve Banks, is charged by the Federal Reserve Act, as amended by the Banking Act of 1935 with the coordination of open-market operations, the most important monetary policy instrument employed by the System to help achieve the nation's economic goals (Act of August 23, 1935 (49 Stat. 684)). The 1935 Act provided for centralized policy formulation and administration in order to strengthen open-market operations as a monetary policy tool. Under the Act Reserve Banks no longer were permitted to engage or decline to engage in open-market operations without FOMC approval. (Affidavit of Merritt Sherman ¶ 8 (hereinafter Sherman Aff. ¶ —).

5. Under the Banking Act of 1935, the FOMC adopted regulations and selected the Federal Reserve Bank of New York as agent to conduct open market operations. In addition, the FOMC began the practice, still in effect, of appointing an officer of the New York Reserve Bank as manager of the System Open Market Account. Under an FOMC directive of 1936, the Reserve Banks transferred all government securities in their individual accounts to the System account. (Sherman Aff. ¶ 9.)

6. The FOMC employs open market operations to influence the availability and cost of bank reserves, bank credit, and money. When the Manager of the System Open Market Account purchases securities in the open market, the payment is ordinarily deposited in the sellers' bank and credited to that bank's reserve account in its regional Federal Reserve Bank. This process increases the total volume of bank reserves. As the FOMC increases bank reserves through open market purchases, banks can expand their total volume of loans and investments. This expansion in turn immediately expands the money supply since the demand deposits commercial banks create when they loan and invest money are an important component of the nation's total money supply. Interest rates, the price of credit, shift to reflect the increased availability of credit. Should the System sell securities rather than purchase, the money supply will tend to contract as reserves flow out of commercial banks into the Federal Reserve. (Affidavit of Robert C. Holland ¶¶ 4, 5, 12 (hereinafter Holland Aff. ¶ —).

7. Other major economic tools employed by the Federal Reserve System include the setting of reserve requirements for banks that are members of the Federal Reserve System and the determination of the discount rate for borrowing by member banks. All these instruments are complementary; effective monetary policy requires careful coordination in their use. (Holland Aff. ¶ 3.)

8. In addition to operations in the *domestic* securities market, the FOMC authorizes and directs operations in foreign exchange markets for major convertible currencies. (Holland Aff. ¶ 3.)

9. The formulation of monetary policy by the FOMC is a continuous process. The FOMC typically meets once each month, although the Committee's rules, which parallel the statute, require only that the FOMC meet at least four times each year (12 CFR 272). The discussion at the Committee's monthly meetings includes comments by individual members of the Committee regarding the state of the economy, its prospects for the future, and recommendations by members regarding appropriate long-run and short-run open market policy. During the meetings, the System Account Manager's staff reports on open market operations and on developments in the economy and in domestic and foreign financial markets. On occasion, individual FOMC members or its staff report on meetings they have attended that have a bearing on the Committee's decision. Following a full give-and-take discussion of the FOMC members' often divergent views on policy, a consensus in the form of a Domestic Policy Directive is produced at each meeting to guide the System Account Manager at the Federal Reserve Bank of New York until the FOMC meets again.

In recent years, the FOMC has expressed its objectives in terms of rates of growth for bank reserves and various monetary aggregates, subject to a constraint relating to the permissible range of fluctuation in the weekly average Federal funds rate (the rate at which banks are willing to lend or borrow immediately available reserves on an overnight basis). (Holland Aff. ¶ 11 and 12; Affidavit of Arthur L. Broida Concerning the Contents of Memoranda of Discussion ¶ 5 (hereinafter Broida Aff. II ¶ —)).

10. Following the policy guidelines of the Domestic Policy Directive, the System Account Manager buys and sells securities in the open market for the System Account. Day-to-day operations are discussed at a daily conference call among the Manager, senior staff of the Committee, and at least one member of the Committee. Other members of the Committee are informed by wire each day of the action which the Account Manager expects to take in light of developing conditions on that day. In transacting business for the System Account, the Manager deals

with about two dozen dealers who actively make markets in U.S. government and Federal agency securities and who compete with one another for the available business. Roughly half of these dealers in government securities are departments of large commercial banks; the other market participants include large investment firms and smaller firms specializing in government securities. All of these market participants buy principally, if not exclusively, for their own accounts, as distinguished from accounts of customers for whom they may on occasion act as agents. (Holland Aff. ¶¶ 9-10)

The Nature of FOMC Records

11. Under § 10 of the Federal Reserve Act, the Board of Governors of the Federal Reserve System is required to keep a complete record of the action taken by the Board and by the Federal Open Market Committee upon all questions of policy relating to open market operations, recording therein the votes taken in connection with the determination of open market policies and the reasons underlying the action of the Board and the Committee in each instance. Section 10 also mandates that the Board make an annual report to Congress, including a full account of actions taken during the preceding year with respect to open market policies and operations. Affidavit of Arthur L. Broida Concerning Records of the FOMC ¶ 2 (hereinafter Broida Aff. I ¶ —)).

12. Each meeting of the FOMC results in three types of reports: *Memoranda of Discussion*, *Minutes of Actions*, and *Records of Policy Actions*. The FOMC's *Domestic Policy Directive* is reproduced in all three of these reports. Other identifiable records relevant in this suit are the selected List of Actions, an abridgement of the Minutes of Actions, and various statistical releases of the Federal Reserve System. (Broida Aff. I ¶ 3)

13. The *Domestic Policy Directive* is a statement of general monetary policy generated at each FOMC meeting, in the form of guidelines for the System Account Manager to follow until the next meeting. Public availability of the Domestic Policy Directive is routinely deferred

for a period of approximately 45 days after each Committee meeting in accordance with the Committee's Rules, 12 CFR § 271.5. After approximately 45 days, each Directive is published in the *Federal Register*. (Broida AFF I ¶ 9).

14. The *Record of Policy Actions* records the FOMC's Domestic Policy Directive and discloses the Committee's objectives with respect to open market policy. It records all votes cast [sic] by members of the Committee in connection with the determination of open market policy, the reasons underlying the Committee's policy actions, including descriptions of then-current and prospective economic developments and domestic and international financial market conditions, and statements of the reasons for any dissenting votes. Other policy actions in addition to the Directive which may be recorded in these Records include amendments to the foreign currency directive and amendments to the domestic or foreign currency authorization but generally do not include actions relating to operational procedures. The Records contain statistical information upon which the Committee's decisions are based and which may be referred to during the Committee's deliberation. They also include the Committee's objectives for the monetary and credit aggregates, expressed as to a tolerance range for growth rates over specified periods of time and similar tolerance ranges for bank reserves and for the Federal funds rate, (Broida AFF I ¶ 10).

15. The Record of Policy Actions is drafted only after the relevant meeting of the FOMC has been concluded. The FOMC's Secretariat prepares the report and distributes it for comments to all participants at the meeting. Thereafter, the report is submitted in revised form to the Board of Governors for approval and inclusion in the Board's Annual Report to Congress. The existence and public availability of Records of Policy Actions are noted in the *Federal Register* notices announcing and recording the provisions of each Domestic Policy Directive. Like the Domestic Policy Directives which they contain, Records of Policy Actions are not made available for public inspection until approximately 45

days after the meeting for which they are prepared. At that time, the Record of Policy Actions and the Domestic Policy Directive are publicly released in the form of a press release and published in the *Federal Reserve Bulletin*. The Board's Annual Report to Congress is based upon these Records of Policy Actions. (Broida AFF I ¶ 13).

16. The *Memoranda of Discussion* sought by plaintiff are the minutes of the meetings of the FOMC. Like the Records of Policy Actions, Memoranda are prepared only after FOMC meetings. Drafts are circulated for comment among persons who attended, and a final, revised version is approved by the FOMC at a subsequent meeting. Typically a memorandum is a chronological accounting which records (1) usually verbatim, the reports of the Manager and/or Deputy Managers on open market operations in domestic securities and foreign currencies since the previous meeting and the reports of staff economists on the business and financial situation and outlook; (2) usually in somewhat abbreviated and paraphrased form, the statements of participants made in the course of the Committee's discussions of the economic situation, its deliberations on policy with respect to domestic and foreign currency operations, and the offering of opinions and recommendations on these and related matters; and (3) the actions of the Committee with respect to policy and procedural matters. The discussion portions of the Memoranda, which make up the great bulk of the material, are typewritten and double-spaced. All actions, including policy actions, are recorded, set off, and single-spaced in the text of the Memoranda. These actions are also recorded in the *Minutes of Action*, a separate document prepared after each meeting. Finally, from time to time, staff memoranda or other documents may be attached to the Memoranda for the convenience of the Committee; these documents may include sensitive memoranda regarding confidential discussions with foreign governments and foreign central banks. (Broida AFF I ¶¶ 4 and 6; Broida AFF II ¶ 3).

17. While the FOMC is not required by law to prepare and maintain its *Memoranda of Discussion*, it has

followed the policy since 1972 of making Memoranda available to the public five years after the close of the year in which such Memoranda are prepared. One signed original copy is filed in the National Archives and copies are made available at offices of the Board of Governors and the Federal Reserve Banks. The Minutes of Actions are made available for inspection and copying in the Board's Office of Public Information approximately 45 days after the conclusion of a meeting. (Broida AFF I ¶¶ 7-8).

18. A *Selected List of Actions* is made available for public inspection and copying *immediately* after each relevant meeting. The Selected List is an abridged version of the Minutes of Actions, omitting policy actions of the FOMC, publication of which must be deferred for approximately 45 days in the public interest pursuant to 12 CFR § 271.5. The Selected List also omits actions occasionally where, for example, disclosure might disrupt satisfactory conclusion of negotiations with a foreign central bank. (Broida AFF I ¶ 15).

19. *Statistical Releases* are made each week or at other periodic intervals by the Board of Governors. These releases promptly and fully disclose the *results* of the FOMC's Open Market Operations and much of the data on which FOMC policy decisions are based. The most important of these releases include: "Factors Affecting Bank Reserves and Condition Statement of F.R. Banks," "Money Stock Measures," the weekly Summary, "Deposits, Reserves and Borrowing of Member Banks," and the "Weekly Summary of Banking and Credit Measures." Besides publication in the monthly Federal Reserve *Bulletin*, the documents are released to and routinely published in the financial sections of local newspapers throughout the country. (Broida AFF I ¶ 16).

20. Finally, many particular actions of the Committee are announced immediately—through press releases and the *Federal Register*—without the deferral of availability deemed necessary for such actions as the Domestic Policy Directive. An example of a recent action which was made immediately available is a decision to extend repurchase agreements to bank dealers in Government securities, as

well as to the nonbank dealers previously authorized. (Broida AFF I ¶ 17).

Factors Supporting Deferred Availability of the Record of Policy Actions and the Memoranda of Discussion

21. The major reason supporting the requirement of a delay in publication of the Federal Open Market Committee's domestic policy Directive and Records of Policy Actions is that immediate or very early disclosure of Federal Open Market Committee's domestic policy Directive and Records of Policy Actions might well lead to exaggerated market reactions that could interfere with the orderly execution of policy, and hence interfere with the accomplishment of desired monetary policy objectives. (Affidavit of Peter D. Sternlight ¶ 2 (hereinafter Sternlight AFF ¶—)).

Open Market operations, as contrasted with changes in reserve requirements by the Board of Governors, or changes in Reserve Bank discount rates, are often intended to have a gradual or limited effect upon conditions in the market and the level of bank reserves. (Sternlight AFF ¶ 3).

When it appears necessary for the Committee's open market operations, and their policy implications, to be relatively visible and decisive, rather than gradual, the Committee can tailor its market actions to achieve the desired level of visibility and decisiveness by varying the type and scale of its transactions. Such variances would still leave some uncertainty among market observers as to whether or nor, or to what extent, the Committee had changed its policy at the meeting which intervened between the effective date of the most recently published Directive and the date of its publication. This degree of uncertainty among market participants is desirable in that it permits the Federal Reserve to modify its open market objectives flexibly, in response to new information and analyses, without generating excessive market reactions to each modification. In contrast, the certain knowledge of Committee decisions that

would follow immediate disclosure is likely to produce exaggerated market reactions deleterious to the functioning of the financial system. (Sternlight AFF ¶ 4).

A delay in disclosure of Federal Open Market Committee decisions is an essential element to the effectiveness of open market operations; and immediate disclosure of the Committee's Domestic Policy Directive and Record of Policy Actions might well impair the effectiveness of those operations as an instrument of monetary policy. (Sternlight AFF ¶ 5).

22. Immediate disclosure of the FOMC's Record of Policy Actions would aid speculators without significantly assisting small investors. (Affidavit of Stephen H. Axilrod ¶ 3 (hereinafter Axilrod AFF ¶ —)). About 25 dealers in Government securities routinely conduct transactions with the FOMC's trading [sic] desk, including various stock market firms and several large commercial banks. These dealers buy and sell securities *for their own account*. (Axilrod AFF ¶ 4). Premature disclosure of the FOMC's tolerance ranges for the money supply, bank reserves, and Federal funds rate—items normally disclosed in the Record of Policy Actions—would cause interest rates to react rather promptly in a manner which brings about the result which the market believed would ensue from contemplated Committee actions to enforce those tolerance ranges. (Axilrod AFF ¶ 6). Knowledgeable speculators and active market participants would thus be the primary, if not exclusive, beneficiaries of immediate disclosure since small investors would not have the expertise to interpret the necessarily technical aspects of these decisions. (Axilrod AFF ¶ 3).

23. There is danger from the immediate publication of the Record of Policy Actions that the market will overreact and that such overreaction will be beyond the power of the Committee or of the System to control: in short, the objectives of monetary policy will be frustrated. It is entirely possible that the market reaction to publication of the Policy Record will be one that the FOMC did not intend to create and one that, in fact, will impede the monetary policy being pursued at the time. (Axilrod AFF ¶ 6). The FOMC does not definitively decide on a

particular interest rate level for an entire period between meetings; rather, the interest rate levels that will evolve after a meeting depend, in part, on the strength and pattern of credit demands and the extent to which the System finds it necessary to adjust the provision of bank reserves through open market operations in an effort to keep monetary and credit aggregates on track. (Holland AFF ¶ 12). Should the FOMC find it necessary to counteract excessive or adverse market reactions to premature disclosure of its objectives, remedial action taken by the Committee might well create additional problems by damaging the financial industry. For example, such actions could lead to large capital losses if market interest rates have been pushed down beyond what is justified by available information and could inhibit financing operations of the U.S. Treasury and of other public and private borrowers. (Axilrod AFF ¶ 7).

24. The Memoranda of Discussion are, in substance, minutes of the FOMC. Although actions of the FOMC are referenced in the Memoranda of Discussion, such actions are disclosed to the public in the FOMC's Records of Policy Actions and the Minutes of Actions. The essential facts and considerations underlying FOMC decisions are disclosed to the public through the Board's weekly statistical releases and the Committee's Record of Policy Actions. What remains undisclosed in the Memoranda are reports of the deliberations of the FOMC through which the Committee reaches its decisions on questions of policy. These memoranda reflect the unfettered, spontaneous expressions of the views and opinions of FOMC members and staff. Some of these expressions may be put forth primarily to elicit discussion and clarification of issues rather than as statements of firmly held views. Some may turn out to be inconclusive with respect to the FOMC's ultimate decisions, and others may be at odds with those decisions. All such expressions do, however, contribute to the decisional process. If the FOMC's Memoranda of Discussion were to be released prematurely, the FOMC would be faced with the choice of permitting a destructive loss of candor in its deliberations or of preserving the members' ability to

speak their minds freely and fully by terminating the preparation of such Memoranda. (Broida Aff. I ¶ 8; Broida Aff. II ¶ 5)

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0736

DAVID R. MERRILL, ET AL., PLAINTIFFS

v.

FEDERAL OPEN MARKET COMMITTEE OF THE
FEDERAL RESERVE SYSTEM, DEFENDANT

AFFIDAVIT CONCERNING RECORDS
OF THE FOMC

I, Arthur L. Broida, being first duly sworn, depose and say as follows:

1. I was originally employed in the Federal Reserve System in 1947 as an Economist in the Division of Research and Statistics. In 1963 I was made Assistant Secretary to the Board of Governors. In March of 1964 I was named Assistant Secretary to the Federal Open Market Committee ("Committee"); and in 1969 I became Deputy Secretary of the Committee. I am presently Assistant to the Board of Governors and Secretary of the Federal Open Market Committee, positions I have held since 1973. As Secretary of the Committee, I have ultimate supervisory responsibility for, and control over, the records of the Federal Open Market Committee. I am the official chiefly responsible for preparation of the Committee's Memoranda of Discussion and Records of Policy Actions.

The Nature of FOMC Records

2. Under § 10 of the Federal Reserve Act, the Board of Governors of the Federal Reserve System is required to keep a complete record of the action taken by the Board and by the Federal Open Market Committee upon all questions of policy relating to open market operations, recording therein the votes taken in connection with the determination of open market policies and the reasons underlying the action of the Board and the Committee in each instance. Section 10 also mandates that the Board

include in its annual report to the Congress a full account of actions taken during the preceding year with respect to open market policies and operations and a copy of the records mentioned above as required by § 10.

3. Each meeting of the Federal Open Market Committee results in three types of *reports*: Memoranda of Discussion, Records of Policy Actions, and Minutes of Actions. The Committee's *Domestic Policy Directive* is reproduced in all three of these reports. Other identifiable records relevant in this suit are the Selected List of Actions (an abridgement of the Minutes of Actions), and various statistical releases of the Federal Reserve System.

* * * *

Domestic Policy Directive

9. The Committee's Domestic Policy Directive is a statement of a general monetary policy, in the form of a directive to the Federal Reserve Bank of New York, for use by the Manager of the System Open Market Account in conducting open market operations after each meeting of the Committee. This Directive is, of course, recorded in the Memoranda of Discussion. It is also recorded in the Committee's Record of Policy Actions and in the Committee's Minutes of Actions. Public availability of the Domestic Policy Directive is routinely deferred for a period of approximately 45 days after each Committee meeting in accordance with the Committee's Rules, 12 C.F.R. § 271.5. At the end of this period, the Directive is published in the *Federal Register*, released to the press as part of the Record of Policy Actions, and made available for public inspection at the Board's Public Information Office as part of the Committee's Minutes of Actions. The Committee commenced publishing the Directive in the *Federal Register* in 1967.

Record of Policy Actions

10. The Records of Policy Actions report all votes cast by member of the Committee in connection with the determination of open market policy, the reasons underly-

ing the Committee's policy actions, and the reasons for any dissenting votes. The policy actions so reported consist of the text of the Domestic Policy Directive, which is customarily modified from meeting to meeting, and amendments—usually less frequent—to the three other policy instruments issued by the Committee: the Authorization for Domestic Open Market Operations, the Foreign Currency Directive, and the Authorization for Foreign Currency Operations. The Policy Records generally do not report actions relating to procedural matters, although some may be included if deemed of sufficient general interest.

In connection with the explanation of the Committee's action on the Domestic Policy Directive, the Policy Records contain descriptions of current and prospective economic developments and domestic and international financial market conditions, which are summaries of the economic and financial information upon which the Committee's decision was based. The Records also report the Committee's objectives for monetary and credit aggregates, expressed as tolerance ranges for growth rates over specified periods of time, and similar tolerance ranges for bank reserves and a key interest rate, the Federal funds rate.

11. From time to time, circumstances require that the Committee members vote on proposed amendments to a policy instrument during the period between FOMC meetings. Such votes are taken and the resulting actions and the reasons therefore are published in the Record of Policy Actions of the Committee's most recent meeting. The Records of Policy Actions of the Committee's January 1975 and February 1975 meetings record some such actions of the Committee taken after those respective meetings.

12. These Records of Policy Actions are incorporated by reference in the *Federal Register* notices announcing and recording the provisions of each Domestic Policy Directive. Like the Domestic Policy Directives which they contain, the Records of Policy Actions are not made available for public inspection until approximately 45 days after the meeting which they record. At that time,

the Record of Policy Actions, including the Domestic Policy Directive, is made public in the form of a press release, and subsequently it is published in the monthly *Federal Reserve Bulletin*. The Records for each calendar year are included in the Board's Annual Report to Congress for that year, as required by section 10 of the Federal Reserve Act.

13. The Record of Policy Actions can be prepared only *after* the relevant meeting of the Committee has been concluded. The FOMC's Secretariat prepares a preliminary draft and distributes it for comments to participants at the meeting, including the 12 presidents of Federal Reserve Banks (who do not reside in Washington, D.C.), five of whom are Committee members. The Secretariat prepares a revised draft in light of comments received and submits it for review to the Board of Governors, which by law is responsible for these records. Some time is required for preparation and successive reviews of this material. Thus, while the Domestic Policy Directive exists in final form at the end of the meeting at which it is adopted, the Record of Policy Actions does not exist as a record or in any other form at the start of the 45-day deferred availability period. In fact, these Records are usually not submitted to the Board of Governors for final approval until after the FOMC's next succeeding meeting. Prior to 1967, the FOMC's Records of Policy Actions for a full calendar year were published only after the close of the year, in the Board's Annual Report to Congress. Since 1967, however, the Record for each meeting has been published separately, at the end of the deferred availability period.

* * * *

/s/ Arthur L. Broida
ARTHUR L. BROIDA

Subscribed and Sworn to before me this 24th day of October, 1975.

/s/ Gene G. Stephens
Notary Public

My Commission Expires August 31, 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0736

DAVID R. MERRILL, ET AL., PLAINTIFFS

v.

FEDERAL OPEN MARKET COMMITTEE OF THE
FEDERAL RESERVE SYSTEM, DEFENDANT

AFFIDAVIT

I, Robert C. Holland, being first duly sworn, depose and say as follows:

1. I am a member of the Board of Governors of the Federal Reserve System. I was appointed to the Board by President Nixon effective June 11, 1973. I am also by statute a member of the Federal Open Market Committee. I originally joined the Federal Reserve System in 1949 as a Financial Economist for the Federal Reserve Bank of Chicago where I was later appointed Assistant Vice President (Research) in 1957 and Vice President (Loans) in 1959. I joined the Board's staff in 1961 and held various official positions in the Division of Research and Statistics from 1961 until 1965. The Division of Research and Statistics provides the Board and the Federal Open Market Committee with the economic analysis and information needed for the formulation of monetary and credit policies and conducts research relating to the effects of monetary policy. I also served as Associate Economist, Federal Open Market Committee, from 1962 until 1966 and as Secretary of the Federal Open Market Committee from 1966 until 1973. From 1965 until 1967, I served as Adviser to the Board of Governors. I was Secretary of the Board from 1968 until 1971 and I became Executive Director of the Board in 1971, a position I held until my appointment as a Member of the Board. I hold the degree of Bachelor of Science in Finance from the Wharton School of Finance and Commerce, University of Pennsylvania, and a Master of Arts and Doctor of

Philosophy in Economics from the University of Pennsylvania.

FUNCTIONS OF THE FEDERAL OPEN MARKET COMMITTEE

2. The Federal Open Market Committee (FOMC) is composed of the seven members of the Board of Governors and five Reserve Bank presidents, one of whom is always the president of the Federal Reserve Bank of New York, and four of whom serve in rotation. The FOMC is by law given the responsibility of using, in the public interest, the most important monetary policy instrument employed by the Federal Reserve System to influence the availability and cost of bank reserves, bank credit, and money, in order to help achieve the nation's economic goals.

3. The FOMC authorizes and directs Federal Reserve Bank purchases and sales of U.S. Government and certain other securities in the domestic securities market. These Reserve Bank operations are conducted through a combined investment pool termed the System Open Market Account, under the direct supervision of a Manager instructed by the FOMC. In addition, the FOMC authorizes and directs Reserve Bank operations in foreign exchange markets for major convertible currencies. The other major instruments of monetary policy include the setting of the discount rate and of reserve requirements for commercial banks that are members of the Federal Reserve System. It is important to note that the various instruments of monetary policy are complementary, and the Federal Reserve System thus effects its monetary policy through the coordinated use of these instruments.

4. Open market operations are important because of their prompt and direct influence upon the level of member bank reserves. When the System Open Market Account (SOMA) purchases securities in the open market, the payment is ordinarily deposited in the seller's bank and credited to that bank's reserve account in its regional Federal Reserve Bank. This process increases the total volume of bank reserves. Conversely, when the SOMA

sells securities, the sales price typically is deducted from the buyer's bank's reserve account, thereby decreasing the volume of reserves held by member banks.

5. Changes in the volume of member bank reserves necessarily influence the ability of member banks to expand loans and investments. Member banks are required to hold a certain amount of reserves behind their deposits in accord with Board's Regulation D, 12 C.F.R. § 204. These banks typically respond to a lowering of reserve requirements or to a supplying of reserves through Open Market purchases by expanding loans and investments and/or by selling their newly excess reserves to other member banks which are short of reserves or which need additional reserves in order to take advantage of particular lending and investment opportunities. As a result, deposits, loans and investments for the banking system expand to about the limit permitted by the required reserve ratio.

6. Changes in the availability of member bank reserves influence interest rates on money market instruments, including the Federal funds rate (the rate at which banks are willing to lend or borrow immediately available reserves on an overnight basis), and interest rates in the economy as a whole. Spending and investment by all sectors of the economy and all levels of industry tend to be influenced by the terms and conditions for obtaining credit.

7. By far the largest portion of the FOMC's open market operations involves the purchase and sale of U.S. Government securities—although the FOMC also directs purchases and sales of some Federal agency securities and bankers acceptances. One reason for this is that open market operations can work effectively as a tool of monetary policy only if the FOMC is able to buy or sell securities promptly, at its own initiative, and in whatever volume may be needed to keep the supply of bank reserves in line with prevailing policy objectives. The enormous secondary market in U.S. Government securities is large enough for the effective conduct of monetary policy.

8. The FOMC meets approximately once each month to deliberate on policy objectives and to give policy guid-

ance, for the period until the Committee's next meeting, to the System Open Market Account (SOMA) Manager, who is a senior officer of the Federal Reserve Bank of New York. The FOMC expresses the policy guidance in the form of a Domestic Policy Directive issued to the Federal Reserve Bank of New York.

9. Day-to-day operations in SOMA are discussed at a daily conference call among the Manager, senior staff of the Committee, and at least one member of the Committee. Other members of the Committee are informed by wire each day of the action which the Account Manager expects to take in light of developing conditions on that day.

10. In transacting business for the SOMA, the Manager deals with about 25 dealers who actively make markets in U.S. Government and Federal agency securities and compete with one another for the available business. Roughly half of these dealers are departments of large investment firms and smaller firms that specialize in government and closely related securities. All of these market participants buy principally, if not exclusively, for their own accounts.

11. The formulation of monetary policy by the FOMC is a continuing process. The discussion at the monthly meetings includes comments by individual members of the Committee regarding the state of the economy and its prospects for the future, recommendations by members regarding the appropriate long-run open market policy, and a full give-and-take discussion of these often divergent views in order to reach a consensus and thus provide guidance to the SOMA Manager. During the meetings, the Manager, or his deputies, and staff economists, report on open market operations, and on developments in the economy and in domestic and foreign financial markets. On occasion, individual members of the Committee or the staff report on meetings they have attended that have a bearing on the Committee's decisions.

12. In recent years, the Committee has expressed its objectives in terms of rates of growth for bank reserves and various monetary aggregates, subject to a constraint relating to the permissible range of fluctuation in the weekly average Federal funds rate. The FOMC does not

definitively decide on a particular interest rate level for an entire period between meetings; rather, the interest rate levels that will evolve after a meeting depend, in part, on the strength and pattern of credit demands, the behavior of the monetary aggregates, and the extent to which the System finds it necessary to adjust the provision of bank reserves through open market operations in an effort to keep monetary and credit aggregates on track.

FACTORS SUPPORTING DEFERRED AVAILABILITY

13. The two major reasons for the Committee's policy of deferred availability include: preventing interference with the orderly execution of policy; and preventing speculators and others from gaining unfair advantages. The reasons supporting deferred availability are more fully set forth in the FOMC's Rules Regarding Availability of Information, particularly 12 C.F.R. § 271.5(b).

14. SOMA open market operations usually are intended to have a gradual effect upon market conditions and the level of bank reserves in member banks, as opposed to the other tools of monetary policy, such as changes in reserve requirements and in the discount rates, which are often used when a more immediate response is desired. Should the Domestic Policy Directive be prematurely disclosed during the period prior to the FOMC's next meetings, the published directive would be relevant to current and forthcoming SOMA operations. Such premature release of the Directive would likely have a great impact upon market expectations, and run the undue risk of interfering with the orderly functioning of these markets. One of the most useful aspects of open market operations as a tool of monetary policy is its usefulness in implementing changes gradually or in enabling the FOMC to probe in a given direction while maintaining the ability to withdraw from that course if necessary. Even a moderate reaction in the market due to changed expectations caused by a prematurely disclosed Directive could impair the use of this monetary policy tool in this manner.

15. If the Directive were released immediately after an intervening meeting, there could still be a deleterious effect upon open market operations by causing fluctuating market rates if the disclosed Directive were first perceived as relevant to current operations by observers who acted accordingly and then had to reverse their action upon realizing that they had misconstrued the Committee's policy. In the FOMC's judgment, the possibility that this adverse effect will occur is no longer substantial 45 days after the relevant FOMC meeting.

16. The FOMC has carefully considered its policy of deferred availability in light of the critical importance of open market operations as a monetary policy tool and the Freedom of Information Act's policy of public disclosure. In the FOMC's present judgment, a policy of deferring availability of the Policy Directive, and publication of the Directive and of the Records of Policy Actions, for 45 days after each FOMC meeting provides the minimum deferment of availability that is consistent with the public interest in achieving an effective monetary policy and a sound national economy.

17. There are approximately twenty-five dealers in Government securities who routinely deal with the Committee's trading desk at the Federal Reserve Bank of New York. As previously stated, these dealers include several large commercial banks and various stock brokerage firms, all of whom buy and sell Government securities for their own account. If the tolerance ranges for the Federal funds rate, bank reserves and the monetary aggregates that the Committee has planned, as set out in the Record of Policy Actions, were disclosed, these dealers and other active institutions in the market would be in a position to act immediately; they would therefore, potentially have an unfair advantage over the individual investor who does not deal regularly in the Government securities market. These dealers would also be in a position to frustrate or interfere with attainment of the Committee's monetary policy objectives by acting immediately and substantially in a manner inconsistent with those objectives. Disclosure of the various tolerance ranges presently being utilized by the FOMC raises the

danger that the reaction of the market might not be one the Committee intended and might be beyond the power of the System to control effectively.

/s/ Robert C. Holland
ROBERT C. HOLLAND

Subscribed and sworn to before
me this 24th day of Oct., 1975.

/s/ [Illegible]
Notary Public
My Commission Expires Nov. 30, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0736

DAVID R. MERRILL, ET AL., PLAINTIFFS

v.

FEDERAL OPEN MARKET COMMITTEE OF THE
FEDERAL RESERVE SYSTEM, DEFENDANT

AFFIDAVIT

I, Peter D. Sternlight, being duly sworn, depose and say as follows:

1. I am currently employed as a vice president of the Federal Reserve Bank of New York and deputy manager for domestic operations of the Federal Reserve System's open market account. As such I am responsible for directing the daily operations of the securities trading desk—the control center of the System's open market functions—under the guidance of Mr. Alan R. Holmes, the Manager of the open market account. I joined the staff of the Federal Reserve Bank of New York in 1950 as an economist in the foreign research division. After two years in the Army serving as an economist with the Defense Department, I was reassigned to the foreign and then the domestic research division of the New York Reserve Bank, first as an economist and later as a special assistant. In 1960, I was named chief of the domestic research division; and in 1961, I was made a special assistant in the securities department, following a leave for several months to serve as an assistant to the Under Secretary of the Treasury for Monetary Affairs. The following year I was appointed manager of the securities department at the Federal Reserve Bank; and in 1964, I was named an assistant vice president assigned to open market operations and Treasury issues. I departed the staff of the Federal Reserve Bank of New York in 1965.

From 1965 to 1967 I served as Deputy Under Secretary of the Treasury for Monetary Affairs. I returned to the New York Reserve Bank in 1967 as an assistant vice president. In 1968 I was named vice president and in 1973 I became deputy manager of the system account. I received a B.A. in economics from Swarthmore College and a Masters and Ph.D. in economics from Harvard University.

2. The major reason supporting the requirement of a delay in publication of the Federal Open Market Committee's domestic policy Directive and Records of Policy Actions is that immediate or very early disclosure of these materials might well lead to exaggerated market reactions that could interfere with the orderly execution of policy, and hence interfere with the accomplishment of desired monetary policy objectives.

3. Open Market operations, as contrasted with changes in reserve requirements by the Board of Governors, or changes in Reserve Bank discount rates, are often intended to have a gradual or limited effect upon conditions in the market and the level of bank reserves. Indeed, a major advantage of open market operations as a tool of monetary policy is that such operations can have a gradual though pervasive and significant effect on financial markets without the abrupt impact that would often be likely to follow immediate disclosure of Committee decisions.

4. When it appears necessary for the Committee's open market operations, and their policy implications, to be relatively visible and decisive, rather than gradual, the Committee can tailor its market actions to achieve the desired level of visibility and decisiveness by varying the type and scale of its transactions. Such variances would still leave some uncertainty among market observers as to whether or not, or to what extent, the Committee had changed its policy at the meeting which intervened between the effective date of the most recently published Directive and the date of its publication. This degree of uncertainty among market participants is desirable in that it permits the Federal Reserve to modify its open market objectives flexibly, in response to new information

and analyses, without generating excessive market reactions to each modification. In contrast, the certain knowledge of Committee decisions that would follow immediate disclosure is likely to produce exaggerated market reactions deleterious to the functioning of the financial system.

5. I conclude that a delay in disclosure of Federal Open Market Committee decisions is an essential element to the effectiveness of open market operations; and immediate disclosure of the Committee's Domestic Policy Directive and Record of Policy Actions might well impair the effectiveness of those operations as an instrument of monetary policy.

/s/ Peter D. Sternlight
PETER D. STERNLIGHT

Subscribed and sworn to before me
this 21st day of October, 1975.

/s/ Gena G. Stephens
Notary Public

My Commission Expires August 31, 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0736

DAVID R. MERRILL, ET AL., PLAINTIFFS

v.

FEDERAL OPEN MARKET COMMITTEE OF THE
FEDERAL RESERVE SYSTEM, DEFENDANT

AFFIDAVIT

I, Stephen H. Axilrod, being first duly sworn, depose and say as follows:

1. I have been employed by the Board of Governors of the Federal Reserve System for 23 years, and by the Federal Open Market Committee for 7½ years. I currently hold the following positions: Adviser to the Board of Governors in the Office of the Managing Director for Economic Research and Policy and Economist (Domestic Finance) Federal Open Market Committee. I received an A.B. from Harvard College, magna cum laude in economics and Phi Beta Kappa. I also received my graduate degree in Planning at the University of Chicago and did additional graduate work in Economics.

2. The Federal Open Market Committee oversees the most important monetary policy instrument employed by the Federal Reserve System to influence the availability and cost of bank reserves, bank credit, and money, in order to help achieve the nation's economic goals. In addition to operations in the domestic securities market, the FOMC authorizes and directs operations in foreign exchange markets for major convertible currencies. Open market operations are important because of their prompt and direct influence upon the level of member bank reserves. Necessarily changes in the availability of member bank reserves influence the money supply and interest rates on money market instruments, including the Federal funds rate, and interest rates in the economy as a

whole. The other major instruments of monetary policy include the setting of reserve requirements for banks that are members of the Federal Reserve System and of the discount rate. It is important to note that the various instruments of Monetary Policy are complementary, and the Federal Reserve thus effects its Monetary Policy through the coordinated use of these various instruments.

3. Disclosure immediately after each meeting of the Federal Open Market Committee's Record of Policy Actions—which records the Committee's Domestic Policy Directive and discloses the Committee's objectives with respect to open market policy as reflected in the Directive as well as other policy actions, the reasons underlying these policy actions, and descriptions of then-current and prospective economic developments—would aid speculators and other active market participants unduly, if it were any aid at all, and would not significantly assist small investors who would not have the expertise to interpret the necessarily technical aspects of these decisions.

4. There are approximately 25 dealers in Government securities who routinely conduct transactions with the Committee's trading desk at the Federal Reserve Bank of New York, including various stock market firms and several large commercial banks, all of whom buy and sell securities *for their own account*. These large firms, together with other active market participants, rather than individual members of the public dealing in small amounts of securities would be the primary, if not exclusive, beneficiaries of immediate disclosure of the Committee's actions.

5. While there is a potential benefit to knowledgeable speculators and active market participants from immediate publications of the policy record, there is also danger that the market will overreact, and that such overreaction would be beyond the power of the Committee or of the Federal Reserve System to control, in short, that the objectives of monetary policy would be frustrated. It is entirely possible that the market reactions to premature publication of the policy record would be one that the Committee did not intend to create and one that, in fact,

would impede the monetary policy being pursued at the time by the Committee.

6. For example, premature disclosure of the Committee's tolerance range for the money supply, bank reserves and the Federal funds rate, items normally disclosed in the Record of Policy Actions may cause interest rates to react rather promptly in a manner that would bring about the result which the market believed would ensue from contemplated Committee actions to enforce those tolerance ranges. (The Federal funds rate is the rate at which banks are willing to buy or sell excess reserves—chiefly in transaction with other banks—on an overnight basis. The Committee's policy directives are intended to achieve certain objectives with respect to the size of the money supply, the Federal funds rate, and other key factors.) For example, if market participants believed, after viewing the Committee's ranges, that the odds favor a rise in the Federal funds rate, the market would react immediately in a manner which would tend to push up interest rates by selling securities. Alternatively, if market participants concluded that interest rates would go down as a result of the Committee's policy, the market would react in a manner consistent with that judgment and would, as a result, cause interest rates to go down and prices to go up. Such movements may be contrary to the Committee's intentions and would unduly complicate the ability of the FOMC to carry out policy.

7. Should the Committee find it necessary to counteract excessive or adverse market reactions to premature disclosure of its objectives, remedial action taken by the Committee might well create additional problems by damaging the financial industry, for example, by leading to large capital losses if market interest rates have been pushed down beyond what is justified by available information, and by inhibiting the financing operations of

the U. S. Treasury and of other public and private borrowers.

/s/ Stephen H. Axilrod
STEPHEN H. AXILROD

Subscribed and sworn to before me
this 24th day of October, 1975.

/s/ Gena G. Stephens
Notary Public

My Commission Expires August 31, 1980

[SEAL]

FEDERAL OPEN MARKET COMMITTEE

For immediate release

March 24, 1975

The Federal Open Market Committee announced today that it has voted to speed up publication of the records of policy actions taken at each of its monthly meetings.

At its meeting of March 18, the Committee revised its Rules Regarding the Availability of Information to reduce the delay between a meeting and the publication of the information regarding the domestic policy directive from approximately 90 days to approximately 45 days.

In view of this action, the FOMC and the Board of Governors today released the attached record of policy actions taken at the FOMC meeting of January 20-21, 1975. Under previous rules, this record would not have been made available until April 21. The record for the meeting held on February 19 will be released on or about April 7, 1975.

A delay of approximately 90 days had been in effect since mid-1967 when the rules were changed to comply with the Freedom of Information Act. Prior to 1967, the records of policy actions were published only in the Board's Annual Report to Congress.

In the light of experience, the Committee decided that a delay as long as 90 days was no longer necessary to avoid an unacceptable degree of risk that speculators would be able to take unfair advantage of the information or that market reactions would impair the effectiveness of the Committee's functions.

The records of policy actions also are published in the Federal Reserve Bulletin and the Board's Annual Report. The summary descriptions of economic and financial conditions they contain are based on the information that was available to the Committee at the time of the meeting, rather than on data as they may have been revised since then.

Attachment

Attachment A

to Defendant's Statement of Points and Authorities
in Support of Defendant's Motion for Summary Judgment

RECORD OF POLICY ACTIONS
OF THE FEDERAL OPEN MARKET COMMITTEE

*Meeting held on January 20-21, 1975*¹

1. *Domestic policy directive*

Preliminary estimates of the Commerce Department indicated that real output of goods and services (real gross national product) had fallen at an annual rate of about 9 per cent in the fourth quarter of 1974, after having declined at an average rate of about 3.5 per cent over the first three quarters of the year. Staff projections suggested that real economic activity would continue to recede in the first half of 1975; that the rate of increase in prices, while still rapid, would moderate; and that nominal GNP would continue to grow at a slow pace.

In December retail sales had risen somewhat, according to the advance estimate, after having declined considerably in the preceding 3 months. The index of industrial production fell sharply further in December; curtailments in output were large and widespread in part because of efforts to liquidate inventories. Employment cutbacks also were widespread, especially among manufacturing establishments. The unemployment rate rose from 6.5 to 7.1 per cent, and the number of persons with only part-time jobs continued to increase.

Average wholesale prices of industrial commodities were unchanged in December—after having risen much less rapidly from August to November than earlier in the year—as declines in a number of basic commodities offset increases in machinery and other more highly fabricated products. Wholesale prices of farm and food products declined, following 2 months of substantial increases. During the final 3 months of 1974 the advance in the index of average hourly earnings for private nonfarm production workers was considerably less rapid than in the two previous quarters.

¹ This meeting began on the afternoon of January 20 and continued on the following day.

In his State of the Union message on January 15, the President set forth a program of fiscal stimulus, which included cash refunds of 1974 personal income taxes in two equal installments—in May and September of this year—and an increase for 1 year in the investment tax credit for businesses and farmers. The proposed tax reductions were estimated to amount to \$12 billion for individuals and \$4 billion for businesses and farmers. In addition, the President proposed excise taxes and import fees on petroleum and excise taxes on natural gas to reduce the use of these energy sources; removal of price controls from domestic crude oil to encourage production; and a tax to recover the windfall profits resulting from the decontrol of prices. The taxes and fees would yield \$30 billion in Federal revenues, on an annual basis, which would be returned to the economy through a permanent reduction in taxes on corporate and individual incomes; through payments of up to \$80 to low-income individuals, including some who would pay no Federal income taxes; and through certain other measures.

Staff projections for the first half of 1975 in essence were similar to those of 5 weeks earlier, although the declines now expected in real GNP were larger for the current quarter and smaller for the second quarter. The President's fiscal program, if enacted, was expected to improve the prospects for an upturn in economic activity in the second half of the year but to have little impact before then, apart from adding to disposable personal income toward the end of the second quarter. Accordingly, it was still anticipated that the rise in personal consumption expenditures would be little, if any, greater than the increase in prices; that the expansion in business fixed investment outlays would fall short of the increase in prices; that residential construction activity would decline further in the current quarter and then turn up; and that the rate of business inventory investment would fall substantially in the first quarter and then shift to liquidation in the next.

The exchange rate for the dollar against leading foreign currencies—which had been declining since early

September—fell somewhat further between mid-December and mid-January, in association with decreases in interest rates in this country relative to those in other major countries. The U.S. foreign trade deficit—after narrowing in September and October—remained moderate in November, as both exports and imports rose substantially. Oil-exporting countries continued to add to their investments in the United States, and large inflows and outflows of bank-reported private capital were roughly offsetting.

At U.S. commercial banks total loans and investments declined sharply from the end of November to the end of December, reflecting in large part decreases in outstanding loans to businesses and to nonbank financial institutions; banks reduced their over-all holdings of securities slightly. In contrast with immediately preceding months, businesses reduced their borrowings in the commercial paper market as well as at banks, in part as a result of efforts to fund short-term debts. In early January most banks reduced the prime rate applicable to large corporations in two steps from 10½ per cent to 10 per cent, but reductions in the rate continued to lag behind declines in commercial paper rates.

Growth in the narrowly defined money stock (M_1)² slowed to an annual rate of about 2 per cent in December. Growth in the more broadly defined money stock (M_2)³ also slowed as net inflows to banks of time and savings deposits other than money market certificates of deposit (CD's) declined sharply; however, net inflows of deposits to nonbank thrift institutions continued to improve. Over the fourth quarter as a whole, M_1 and M_2 grew at rates of 4 and nearly 7 per cent, respectively.⁴ Weekly data indicated that M_1 had declined somewhat in early January but that inflows to banks of consumer-type time and savings deposits had picked up.

² Private demand deposits plus currency in circulation.

³ M_1 plus commercial bank time and savings deposits other than money market CD's.

⁴ The growth rates cited for the quarter are calculated on the basis of the daily-average level in the last month of the quarter relative to that in the last month of the preceding quarter.

On January 20 the Board of Governors announced a reduction in reserve requirements on the net demand deposits of member commercial banks. The action—which would release about \$1.1 billion in reserves to the banking system in the week beginning February 13—was designed to permit further gradual improvement in bank liquidity and to facilitate moderate growth in the monetary aggregates.

System open market operations since the December 16-17 meeting had been guided by the Committee's decision to seek bank reserve and money market conditions consistent with somewhat more rapid growth in monetary aggregates over the months ahead than had occurred in recent months, while taking account of developments in domestic and international financial markets. Data that had become available in the weeks immediately after the December meeting suggested that in the December-January period the aggregates would grow at rates near or below the lower limits of the ranges of tolerance that had been specified by the Committee. Consequently, System operations persistently had been directed toward further easing in bank reserve and money market conditions. In the statement week ending January 8, the Federal funds rate had averaged slightly below 7¾ per cent—down from about 8¾ per cent at the time of the December meeting.

The data that became available on January 9 indicated still greater weakness in the aggregates; it appeared that M_1 and M_2 would grow in the December-January period at rates well below the lower limits of the specified ranges of tolerance. The System currently was conducting reserve-supplying operations thought to be consistent with a weekly average funds rate at about the 7½ per cent lower limit of its specified range of tolerance. Against the background of those developments and to give the Manager greater flexibility, Chairman Burns recommended on January 9 that the lower limit of the funds rate constraint be reduced to 7½ per cent for the period remaining until the next Committee meeting. The members of the Committee concurred, and over most of that period the funds rate was slightly above 7 per cent.

Short-term market interest rates declined substantially further over the inter-meeting period, in response to the weakening in business demands for short-term credit, to System open market operations to ease bank reserve and money market conditions, and to a reduction in Federal Reserve discount rates. Discount rate reductions of $\frac{1}{2}$ of a percentage point, to $7\frac{1}{4}$ per cent, at six Reserve Banks were announced on January 3, to be effective on January 6; shortly thereafter, rates were reduced at the remaining six Banks. Over the inter-meeting period the market rate on 3-month Treasury bills declined nearly three-fourths of a percentage point, to about 6.40 per cent, and rates on private short-term instruments declined considerably more.

Yields on longer-term bonds in general changed little in the inter-meeting period—despite the declines in short-term rates—because corporate financing in the capital market had been and was expected to remain substantial and prospective Treasury financings were large. The volume of public offerings of corporate bonds in December was exceptionally heavy for that season, and a near-record volume was in prospect for January. In the home mortgage market contract interest rates on new commitments for conventional mortgages in the primary market and yields on commitments in the secondary market for Federally underwritten mortgages declined further from early December to mid-January.

The Treasury was expected to announce shortly the terms of its mid-February refunding. Of the maturing issues, \$3.55 billion were held by the public.

The Committee decided that the economic situation and outlook called for more rapid growth in monetary aggregates over the months ahead than had occurred in recent months. A staff analysis suggested that—although M_1 was not expanding in January—the demand for money would pick up in February, in part as a result of the lagged effects of earlier declines in interest rates. Nevertheless, it appeared likely that if M_1 were to grow at a rate consistent with the Committee's longer-run objectives for the monetary aggregates, money market conditions would have to ease further in the period immediately

ahead. It was expected that net inflows of consumer-type time and savings deposits to banks and to nonbank thrift institutions would be relatively strong. Demands for bank credit appeared likely to be moderate.

The Committee concluded that growth in M_1 and M_2 over the January-February period at annual rates within ranges of tolerance of $3\frac{1}{2}$ to $6\frac{1}{2}$ per cent and 7 to 10 per cent, respectively, would be consistent with its longer-run objectives for the monetary aggregates. The members agreed that such growth rates would be likely to involve growth in reserves available to support private nonbank deposits (RPD's) within a range of tolerance of $6\frac{1}{4}$ to $9\frac{1}{4}$ per cent. They also agreed that in the period until the next meeting the weekly average Federal funds rate might be expected to vary in an orderly fashion within a range of $6\frac{1}{2}$ to $7\frac{1}{4}$ per cent, if necessary in the course of operations.

The members also agreed that, in the conduct of operations, account should be taken of the forthcoming Treasury financing and of developments in domestic and international financial markets. It was understood that the Chairman might call upon the Committee to consider the need for supplementary instructions before the next scheduled meeting if significant inconsistencies appeared to be developing among the Committee's various objectives and constraints.

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting suggests that real output of goods and services fell sharply in the fourth quarter of 1974 and that further declines are in prospect for the months immediately ahead. In December declines in industrial production and employment again were sharp and widespread, and the unemployment rate increased from 6.5 to 7.1 per cent. Average wholesale prices of industrial commodities were unchanged, after having risen much less rapidly from August to November than earlier in the year, and prices of farm and food products declined. In recent months

increases in average wage rates have been large, but not so large as in the spring and summer.

In his State of the Union message, the President set forth a program of fiscal stimulus, including tax rebates for individuals and a temporary increase in the investment tax credit for business. The President also proposed a new program to reduce the consumption of energy; the program includes new taxes in the energy area along with measures of tax relief that, on balance, are designed to have a neutral effect on the size of the Federal deficit.

The dollar in December and early January continued the gradual decline against leading foreign currencies that began in September. In November, as in October, the U.S. foreign trade deficit was moderate; sizeable inflows of official funds from oil-exporting countries continued, while other capital inflows and outflows reported by banks were roughly offsetting.

The narrowly defined money stock grew at an annual rate of 4 per cent over the fourth quarter of 1974, while the more broadly defined measure of the stock grew at a rate of nearly 7 per cent. In December and early January, however, the narrowly defined money stock changed little. Net inflows of consumer-type time and savings deposits at banks slowed sharply in December, although they continued to improve at nonbank thrift institutions; in early January deposit inflows at banks picked up. Business demands for short-term credit, both at banks and in the commercial paper market, moderated further in December, while demands in the long-term market remained strong. Over recent weeks short-term market interest rates have declined substantially, but yields on long-term securities have changed little, on balance. Federal Reserve discount rates were reduced from $7\frac{3}{4}$ to $7\frac{1}{4}$ per cent in early January, and on January 20 the Board announced a reduction in reserve requirements on demand deposits estimated to release \$1.1 billion in required reserves.

In light of the foregoing developments, it is the policy of the Federal Open Market Committee, while resisting inflationary pressures and working toward equilibrium in the country's balance of payments, to foster financial conditions conducive to cushioning recessionary tendencies and stimulating economic recovery.

To implement this policy, while taking account of the forthcoming Treasury financing, developments in domestic and international financial markets, and the Board's action on reserve requirements, the Committee seeks to achieve bank reserve and money market conditions consistent with more rapid growth in monetary aggregates over the months ahead than has occurred in recent months.

Votes for this action: Messrs. Burns, Black, Bucher, Clay, Coldwell, Holland, Kimbrel, Mitchell, Sheehan, Wallich, Winn, and Debs. Votes against this action: None.

Absent and not voting: Mr. Hayes, (Mr. Debs voted as alternate for Mr. Hayes.)

Subsequent to the meeting, on February 5, the available data suggested that in January M_1 had declined sharply and that growth in M_2 had been only modest. Growth rates for the January-February period appeared to be well below the lower limits of the ranges of tolerance specified by the Committee. The weakness in the monetary aggregates wholly reflected the behavior of demand deposits; growth in consumer-type time deposits remained relatively strong. The System Account Manager currently was endeavoring to supply reserves at a rate thought to be consistent with a Federal funds rate of $6\frac{1}{2}$ per cent, the lower limit of the range of tolerance that had been specified by the Committee. On February 5 a majority of the members concurred in the Chairman's recommendation that, in light of those developments and of the reduction in discount rates effective that day, the lower limit of the funds rate constraint be reduced to $6\frac{1}{4}$ per cent. Mr. Sheehan did not concur, because he preferred to reduce the lower limit of the

funds rate constraint to 6 per cent, rather than $6\frac{1}{4}$ per cent.

2. Amendment to authorization for domestic open market operations

On January 30 the Committee members voted to amend a provision of paragraph 2 of the authorization for domestic open market operations, which specified that a Reserve Bank other than the New York Bank could purchase special certificates of indebtedness directly from the Treasury only if the latter Bank was closed, by striking the word "if" in the clause "or, if the New York Bank is closed," and inserting in its place the words "under special circumstances, such as when. . ." With this amendment, paragraph 2 read as follows:

The Federal Open Market Committee authorizes and directs the Federal Reserve Bank of New York, or, under special circumstances, such as when the New York Reserve Bank is closed, any other Federal Reserve Bank, to purchase directly from the Treasury for its own account (with discretion, in cases where it seems desirable, to issue participations to one or more Federal Reserve Banks) such amounts of special short-term certificates of indebtedness as may be necessary from time to time for the temporary accommodation of the Treasury; provided that the rate charged on such certificates shall be a rate $\frac{1}{4}$ of 1 per cent below the discount rate of the Federal Reserve Bank of New York at the time of such purchases, and provided further that the total amount of such certificates held at any one time by the Federal Reserve Banks shall not exceed \$1 billion.

Votes for this action: Messrs. Burns, Black, Bucher, Clay, Coldwell, Holland, Mitchell, Sheehan, Winn, Baughman, and Debs. Votes against this action: None.

Absent and not voting: Messrs. Hayes, Kimbrel, and Wallich. (Mr. Debs voted as alternate for Mr. Hayes and Mr. Baughman voted as alternate for Mr. Kimbrel.)

This action was taken on the recommendation of the Account Manager, who had advised Committee members that under certain circumstances involving holidays not uniformly celebrated throughout the country it would be convenient for the Treasury if the authority for Reserve Banks other than New York to purchase special Treasury certificates of indebtedness was not confined exclusively to times when the New York Reserve Bank was closed.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0736

DAVID R. MERRILL, ET AL., PLAINTIFFS

v.

THE FEDERAL OPEN MARKET COMMITTEE OF THE
FEDERAL RESERVE SYSTEM, DEFENDANT

DEFENDANT'S OPPOSITION TO PLAINTIFFS'
STATEMENT PURSUANT TO LOCAL RULE 9
(G) OF MATERIAL FACTS WHICH ARE NOT
IN ISSUE

Defendant, by its undersigned attorneys, hereby objects to plaintiffs' Statement Pursuant to Local Rule 9(g) of Material Facts which are not in issue on the ground that plaintiffs' Statement sets forth conclusions of law and not statements of material fact, and is generally not a complete statement of the material facts which are not in issue. The Court is respectfully referred to the 9(g) Statement filed by the defendant for the material facts which are not in issue in this suit.

Respectfully submitted,

REX E. LEE
Assistant Attorney General

EARL J. SILBERT
United States Attorney

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Reserve Board

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0736

DAVID R. MERRILL, PLAINTIFF

v.

FEDERAL OPEN MARKET COMMITTEE OF THE
FEDERAL RESERVE SYSTEM, DEFENDANT

PLAINTIFF'S RESPONSE TO DEFENDANT'S
STATEMENT OF MATERIAL FACTS WHICH ARE
NOT IN ISSUE

Pursuant to Local Rule 9(g), plaintiff objects to the following enumerated paragraphs in Defendant's Statement of Material Facts Which Are Not In Issue:

1. Plaintiff objects to ¶¶ 4-8, 10, 20, subparagraph 2 of ¶ 9, and the second sentence in ¶ 11, because they contain statements of alleged fact that are irrelevant to the issues presented here.
2. Plaintiff objects to ¶¶ 21 through 24, and to the second sentence in ¶ 19, because they set forth arguments and not statements of material facts.

Respectfully submitted,

/s/ Victor H. Kramer
VICTOR H. KRAMER

/s/ Richard B. Wolf
RICHARD B. WOLF

/s/ Charles E. Hill
CHARLES E. HILL
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624-8390

Counsel for plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0736

DAVID R. MERRILL, PLAINTIFF

v.

THE FEDERAL OPEN MARKET COMMITTEE OF THE
FEDERAL RESERVE SYSTEM, DEFENDANT

MOTION TO AMEND FINDINGS

Defendant, by its undersigned attorneys, pursuant to Rules 52(b) and 59(e) of the Federal Rules of Civil Procedure, hereby moves this Court to amend its findings to reflect that the Records of Policy Action are exempt from the compelled disclosure provisions of the Freedom of Information Act (FOIA) pursuant to 5 U.S.C. 552(b) (2) and (5) and the exercise of this Court's equitable discretion, and, to reflect that in any event, the availability of these records at the expiration of forty-five (45) days from the meeting about which they were prepared, is consistent with the FOIA's requirement of prompt disclosure. In consideration of these amended findings the Court is urged to amend its oral ruling to deny plaintiff's motion for summary judgment and grant the defendant's motion for summary judgment with respect to the Records of Policy Action.

In support of this motion the Court is respectfully referred to the affidavits filed in support of defendant's motion for summary judgment and the memorandum of points and authorities filed herewith.

Respectfully submitted,

REX E. LEE
Assistant Attorney General

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0736

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v.

FEDERAL OPEN MARKET COMMITTEE OF THE
FEDERAL RESERVE SYSTEM, DEFENDANT

AFFIDAVIT

I, Robert C. Holland, being first duly sworn depose and say as follows:

1. I am a member of the Board of Governors of the Federal Reserve System. I was appointed to the Board by President Nixon effective June 11, 1973. I am also by statute a member of the Federal Open Market Committee (FOMC). I originally joined the Federal Reserve System in 1949 as a Financial Economist for the Federal Reserve Bank of Chicago where I was later appointed Assistant Vice President (Research) in 1957 and Vice President (Loans) in 1959. I joined the Board's staff in 1961 and held various official positions in the Division of Research and Statistics from 1961 until 1965. The Division of Research and Statistics provides the Board and the Federal Open Market Committee with the economic analysis and information needed for the formulation of monetary and credit policies and conducts research relating to the effects of monetary policy. I also served as Associate Economist, Federal Open Market Committee, from 1962 until 1966 and as Secretary of the Federal Open Market Committee from 1966 until 1973. From 1965 until 1967, I served as Adviser to the Board of Governors. I was Secretary of the Board from 1968 until 1971 and I became Executive Director of the Board in 1971, a position I held until my appointment as a Member of the Board. I hold the

degrees of Bachelor of Science in Finance from the Wharton School of Finance and Commerce, University of Pennsylvania, and a Master of Arts and Doctor of Philosophy in Economics from the University of Pennsylvania.

2. I hereby expressly reaffirm each and every statement in my affidavit previously submitted to the Court in this case, dated October 24, 1975. In addition, I have read the affidavit of Stephen H. Axilrod, dated October 24, 1975, and the affidavit of Peter D. Sternlight, dated October 21, 1975, both of which were previously submitted to the Court in this case; and I concur in all statements made and positions taken by Messrs. Axilrod and Sternlight in those affidavits. In the present affidavit, I endeavor to clarify certain points previously made in the above-mentioned affidavits by myself and by Messrs. Axilrod and Sternlight.

3. The aforementioned affidavits detail the adverse consequences for the U.S. economy of premature public disclosure of the FOMC's Records of Policy Actions and of its Domestic Policy Directives. The Records of Policy Actions summarize the FOMC's assessment of the country's economic and financial position at the time of each meeting as well as the Committee's views regarding the appropriate course for open market operations during the period ahead. These Policy Records summarize the deliberations taking place at each FOMC meeting and record the guidelines given by the Committee to its agent, the System Open Market Account Manager, for use in conducting open market operations during the period ahead. Some of these guidelines are formalized as 'policy directives' and are printed single-spaced in the Records of Policy Actions. The 'policy directive' relating to open market operations in the domestic securities market is called the Domestic Policy Directive.

The Domestic Policy Directives are routinely made available for public inspection 45 days after each FOMC meeting along with, and as part of, the corresponding Records of Policy Actions. These two documents record the process by which the FOMC performs the function

entrusted solely to it by Congress: direction and regulation of the conduct of open market operations by the Federal Reserve System. See 12 U.S.C. § 263. The FOMC does not adjudicate the rights of individual persons or corporations on applications for licenses or other like approvals; nor does the FOMC issue regulations or take other actions that require particular actions or forbearances by individual members of the public. Rather the FOMC analyzes and evaluates economic conditions in the country with a view toward formulating an approach to influencing the availability and cost of money and credit through the injection and absorption of bank reserves by means of purchases and sales of government securities. The original Federal Reserve Act placed the power to conduct open market operations in the twelve regional Federal Reserve Banks (§ 14, 38 Stat. 251); however, the Banking Acts of 1933 and 1935 created the FOMC, giving it this power previously exercised by the Reserve Banks (48, Stat. 162; 49, Stat. 684).

4. Open market operations are manifestly unlike other kinds of activities typically performed by government agencies. These open market operations consist of purchases and sales of securities—chiefly U.S. Government securities—by the FOMC's agent at the Federal Reserve Bank of New York, in accordance with guidelines and instructions formulated by the FOMC. The guidelines and instructions to the agent are embodied in the Domestic Policy Directive, which is in turn made a part of the Record of Policy Actions for each meeting of the FOMC. The Policy Record summarizes the deliberations of the FOMC leading to the Domestic Policy Directive and sets forth the market strategy agreed upon by the FOMC, including among other things, ranges of tolerance that the FOMC believes acceptable for growth in various measures of the money supply, and for changes in the Federal funds rate—that is, the rate charged for one-day inter-bank loans of excess reserve balances.

5. When the FOMC pays for government securities that it buys, it issues a check to the selling dealer drawn on the nation's central bank, the Federal Reserve. The

net effect of this transaction is to add to the reserves of the nation's banking system, and thus to provide a basis for the creation by the system of additional demand deposit balances. Since demand deposits are the nation's principal medium of exchange, this means of adding to bank reserves in effect creates an additional supply of money in the economy. Conversely, when the FOMC sells securities in the open market, bank reserves are contracted and the base of the money supply is reduced. Open market operations thus directly and immediately influence the amount of money available for use in the U.S. economy. Enormous sums of money are involved in these transactions. In 1974, for example, the total dollar volume of outright transactions in U.S. Government securities by the FOMC was approximately \$19.4 billion, and the total dollar volume of matched sale-purchase transactions and repurchase agreements was approximately \$135 billion. The FOMC is an extremely large and significant participant in the market for U.S. Government securities.

6. The Federal funds rate is a key market interest rate. It is the rate at which commercial banks are willing to buy and sell, among themselves, excess reserves on an overnight basis. Changes in the volume of bank reserves influence the Federal funds rate by encouraging or discouraging commercial banks from buying or selling excess reserves on an overnight basis. Historically, a close relationship can be shown between fluctuations in the Federal funds rate and fluctuations in other key market interest rates. Changes in the availability of reserves also influence loans and investments by commercial banks and bring about changes in the money supply. These changes in bank reserves and the money supply in turn influence interest rates, employment, and other key economic indicators.

7. The FOMC's agent (the System Open Market Account Manager) is guided in his day-to-day operations by the Domestic Policy Directive, by the tolerance ranges for the money supply and the Federal funds rate subsequently reported in the Record of Policy Actions, and by a daily conference call with the staff and at least one

member of the FOMC. A wide variety of options are available to the Manager each day: he may buy or sell any quantity of several different kinds of securities with or without conditions (such as repurchase agreements), or he may do nothing at all. The choice of method is the Manager's; but in making that choice he must consider the FOMC's guidelines in light of developing conditions in the market. In affecting bank reserve availability and hence the Federal funds rate, he also considers the *pace* at which the FOMC desires to effect changes in the rate of growth or contraction of the money supply and changes in other key indicators, such as the liquidity position of banks and other financial institutions. Frequently the FOMC prefers gradual change in market conditions to abrupt market reaction. Economic and financial *stability* is a prime objective of a central bank; and gradual change is often desirable in order to minimize the risk that businessmen, consumers, and investors will overreact and cause economic conditions to worsen, either in the direction of inflation or of recession.

8. The ability of the FOMC to perform its monetary policy functions is likely to be seriously impeded if the other major participants in the U.S. Government securities market know in advance what the FOMC is going to do. These other major participants include the Government securities dealers—chiefly investment firms and departments of large commercial banks who trade principally, if not exclusively, for their own account. Advance knowledge of the FOMC's intentions would cause these other participants to act to maximize their profits by immediately buying or selling to take advantage of changes which they expect the FOMC's anticipated actions to produce. As indicated in the three above-mentioned affidavits by myself and Messrs. Axilrod and Sternlight, however, these speculative adventures by large commercial banks and investment houses can frustrate achievement of the gradual changes usually desired by the FOMC and thus frustrate achievement of the FOMC's monetary policy objectives. A further danger is that speculators—who cannot predict, as accurately as can

the FOMC, future market conditions to which the Directive would apply—might very well incorrectly predict the Manager's actions after reading the FOMC's Directive and Policy Record, and consequently act in the market in a manner inconsistent with the FOMC's objectives. In short, if the Directive and Policy Record are released during the period in which the Directive is effective, the FOMC's monetary policy objectives may well be frustrated. Since it is the FOMC, and no one else, that is entrusted by Congress with the power and responsibility for fostering monetary and economic stability through open market operations, forced premature disclosure of the Directive and Policy Record is likely to produce consequences contrary to the public interest in economic and financial stability.

9. That participants in the market for U.S. Government securities will use such advance information for speculative purposes is as certain as is the continuing desire for profits by people who invest their money in stocks and bonds. For example, if market participants believed, after viewing the Committee's Domestic Policy Directive and ranges of tolerance for growth in the money supply and fluctuations in the Federal funds rate, that the odds favor a rise in interest rates, they would react immediately by selling securities which would tend to push up interest rates and to push down securities prices. Alternatively, if market participants concluded that interest rates would go down as the Manager operated under the Committee's guidelines, they would react in a manner consistent with that judgment and would, as a result, cause interest rates to go down and securities prices to go up. Such movements may be contrary to the Committee's intentions. The only persons benefitting from such speculation-induced movements would be the speculators themselves—the public would be harmed through possible frustration of the FOMC's efforts to achieve certain monetary policy objectives.

10. Premature public disclosure of the FOMC's Records of Policy Actions, within the 45-day period immediately following each meeting of the FOMC, would

thus most likely result in two principal adverse consequences: (1) interference with orderly and effective execution of the FOMC's policies and transactions through unnecessary and unwarranted disturbances in the securities market caused by such disclosures, and (2) the gaining of unfair profits and advantages by market participants engaged in the speculative trading of Government and other securities. These adverse consequences are likely to occur if the entire Record of Policy Actions—including the Domestic Policy Directive, the ranges of tolerance for the Federal funds rate and for growth in the money supply, and other information—is released prematurely. Similar consequences can also occur even if only the Domestic Policy Directive is released prematurely.

11. The tolerance ranges found in the record of this case are contained in the Records of Policy Actions for the FOMC meetings held in January and February, 1975. For January, 1975, these ranges were $3\frac{1}{2}$ - $6\frac{1}{2}$ per cent growth for M_1 , 7 to 10 per cent growth for M_2 , and $6\frac{1}{2}$ to $7\frac{1}{4}$ per cent for the Federal funds rate. The corresponding tolerance ranges for February, 1975 were $5\frac{1}{2}$ - $7\frac{1}{2}$ per cent for M_1 , $6\frac{1}{2}$ - $8\frac{1}{2}$ per cent for M_2 , and $5\frac{1}{4}$ - $6\frac{1}{4}$ per cent for the Federal funds rate. M_1 is a definition of the money supply that includes currency in circulation and demand deposits held by the public in commercial banks. M_2 is a definition of the money supply that includes M_1 plus time and savings deposits, other than large negotiable certificates of deposit, held in commercial banks. The FOMC disclosed these Policy Records to the public, in accordance with its rules, after expiration of a period long enough, in its judgment, to minimize the risk of adverse consequences.

12. To be truly meaningful, the above tolerance ranges must be read in conjunction with the corresponding Domestic Policy Directives. The different kinds of guidance that these Directives may contain are illustrated by the following three excerpts of operative language from three Domestic Policy Directives from designated FOMC meetings:

Meeting held on December 17-18, 1973:

In light of the foregoing developments, it is the policy of the Federal Open Market Committee to foster financial conditions conducive to resisting inflationary pressures, cushioning the effects on production and employment growing out of the oil shortage, and maintaining equilibrium in the country's balance of payments.

To implement this policy, while taking account of international and domestic financial market developments, the Committee seeks to achieve some easing in bank reserve and money market conditions, provided that the monetary aggregates do not appear to be growing excessively.

Meeting held on February 19, 1975:

In light of the foregoing developments, it is the policy of the Federal Open Market Committee to foster financial conditions conducive to cushioning recessionary tendencies and stimulating economic recovery, while resisting inflationary pressures and working toward equilibrium in the country's balance of payments.

To implement this policy, while taking account of developments in domestic and international financial markets, the Committee seeks to achieve bank reserve and money market conditions consistent with more rapid growth in monetary aggregates over the months ahead than has occurred in recent months.

Meeting held on November 18, 1975:

In light of the foregoing developments, it is the policy of the Federal Open Market Committee to foster financial conditions that will encourage continued economic recovery, while resisting inflationary pressures and contributing to a sustainable pattern of international transactions.

To implement this policy, while taking more than usual account of developments in domestic and in-

ternational financial markets, the Committee seeks to achieve bank reserve and money market conditions consistent with moderate growth in monetary aggregates over the months ahead.

13. Phrases such as "conditions consistent with moderate growth in monetary aggregates over the months ahead," "conditions consistent with more rapid growth in monetary aggregates over the months ahead than has occurred in recent months," and "some easing in bank reserves and money market conditions, provided that the monetary aggregates do not appear to be growing excessively" appear often in these Domestic Policy Directives. Such phrases are *terms of art* that have meaning when read by knowledgeable market participants. These participants are students of past Policy Records and Directives and would often be able, from the Directive alone, to reach an educated guess to what the tolerance ranges are. Speculative inclinations would encourage at least some market participants to enter the market on the basis of these guesses. The FOMC's objective of gradual change, while appraising market developments on the basis of incoming information, would be frustrated. Moreover, an incorrect guess may well, as set out above and in the above-mentioned affidavits, aggravate the adversity of the consequences that can flow from the participants' speculative adventures. Thus premature release of the Domestic Policy Directive alone, like premature release of the entire Record of Policy Actions, carries with it the likelihood of substantial impairment of the FOMC's efforts to achieve its monetary policy objectives.

14. One way in which premature release of the Domestic Policy Directive alone could bring about adverse consequences like those that would attend premature release of the entire Record of Policy Actions is illustrated in the following example:

At the meetings in January and February 1975 (those for which the policy records were initially requested by the plaintiff) the Committee's policy directive called (in its final paragraph) for "more rapid growth in monetary

aggregates over the months ahead than has occurred in recent months." It would be reasonable for market participants to infer from such language that the Account Manager was likely to be buying a substantial volume of Government securities (because such purchases have the effect of expanding bank reserves, and therefore bank lending activity) or would be selling less than he might otherwise. Astute market observers (who know that, in response to seasonal pressures, the FOMC normally sells securities in January) would infer that the Account Manager would sell fewer securities than would normally be the case. It would also be reasonable for market participants to infer that because of such activities, securities prices would be higher than they otherwise would have been. Access to this information would thus have the effect of giving market participants an incentive to buy Government securities, or to buy more than they otherwise would have, or to defer planned sales—all of which would serve to drive the prices of Government securities up soon after the information was released. In this process, those participants who had the expertise and financial resources to react quickly and in volume could earn large speculative profits.

15. Such market reactions to release of the FOMC's decision could impede the effective implementation of the Committee's policies in various ways. First, the movement of securities prices and interest rates is likely to be abrupt, as market participants hasten to realize gains, whereas the Committee customarily seeks gradual changes. Second, the movement might often be considerably larger than the Committee contemplated. Third, the inferences about the *direction* of change in securities prices and interest rates that market participants might reasonably draw from information on particular policy decisions can, under certain circumstances, be incorrect, so that their actions would tend to drive prices and rates in the direction opposite of that intended by the Committee.

In all of these cases, the Committee would lose some degree of control over the consequences of its own decisions, and might often find it necessary to call for additional

operations for the sole purpose of offsetting the unintended effects of the publication of its decision. The fluctuations in securities prices and yields that attended this process could have damaging effects on the financial industry and could inhibit the financing operations of the U.S. Treasury and of other public and private bodies.

/s/ Robert C. Holland
ROBERT C. HOLLAND

Subscribed and sworn to before me this 24th day of February, 1976

/s/ [Illegible]
Notary Public

My Commission Expires Nov. 30, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0736

DAVID R. MERRILL, ET AL., PLAINTIFFS

v.

FEDERAL OPEN MARKET COMMITTEE OF THE
FEDERAL RESERVE SYSTEM, DEFENDANT

[Filed Mar. 9, 1976]

ORDER AND JUDGMENT

Upon consideration of the pleadings, cross-motions for summary judgment, the affidavits and exhibits filed herein, and the entire record, and the Court having filed its Memorandum Opinion including its Findings of Fact and Conclusions of Law,

It is by the Court this 9th day of March, 1976,

ORDERED, ADJUDGED and DECLARED:

1. That plaintiff's motion for summary judgment be, and the same hereby is, granted;
2. That defendant's motion for summary judgment be, and the same hereby is, denied;
3. That defendant has acted unlawfully and contrary to its obligation of prompt disclosure under subsection (a) of the Freedom of Information Act, 5 U.S.C. § 552, by promulgating and enforcing 12 C.F.R. § 271.5, as amended March 24, 1975, 40 Fed. Reg. 13204, insofar as it provides for a 45 day delay in the public disclosure of defendant's Domestic Policy Directive and other policy actions after their adoption, and defendant's "Records of Policy Actions" after their approval;
4. That defendant's practice of delaying the release of reasonably segregable factual portions of the memoranda of discussion of defendant's meetings is unlawful

and contrary to its obligation of prompt disclosure under subsection (a) (3) of the Freedom of Information Act, 5 U.S.C. § 552;

5. That defendant shall cease to give effect to or in any way enforce 12 C.F.R. § 271.5 insofar as it provides for a delay in the public disclosure of defendant's policy actions after their adoption and defendant's "Records of Policy Actions" after their approval;

6. That defendant shall currently publish in the Federal Register its Domestic Policy Directive upon the adoption of said Directive with no delay in publication other than that occasioned by the normal process of publication in the Federal Register;

7. That defendant shall make its other policy actions, including statements and interpretations of policy, available for public inspection and copying upon their adoption unless said policy actions are promptly published with no attendant delay other than that occasioned by the normal publication process;

8. That defendant shall make all portions of its "Records of Policy Actions" which are not statements and interpretations of policy promptly available to the public upon the adoption of said "Records of Policy Actions."

9. That defendant shall promptly make available to the plaintiff, for inspection and copying, those reasonably segregable factual portions of the memoranda of discussion of the Federal Open Market Committee meetings of January 20-21, 1975, and February 19, 1975;

10. That should the defendant claim that the January 20-21, 1975, memorandum of discussion and/or the February 19, 1975, memorandum of discussion contain factual portions which are not reasonably segregable, it shall produce the memoranda to the Court within ten days for *in camera* inspection;

11. That defendant's motion to amend the Court's findings at the hearing on the cross-motions for summary judgment be, and the same hereby is, denied.

12. That defendant's motion to stay this ORDER as it relates to the defendant's records of policy actions be, and the same hereby is, granted and Paragraphs 5, 6, 7 and 8 of this Order and Judgment are hereby

stayed and shall not take effect for 10 days from the date hereof or until further order of the Court in the event notice of appeal is filed within said 10 days.

13. That plaintiff's prayer for counsel fees be and the same hereby is held in abeyance pending the disposition of any appeal in this case or until further order of this Court.

/s/ Joseph C. Waddy
 JOSEPH C. WADDY
 United States District Judge

SUPREME COURT OF THE UNITED STATES

No. 77-1387

FEDERAL OPEN MARKET COMMITTEE OF THE
 FEDERAL RESERVE SYSTEM, PETITIONER

v.

DAVID R. MERRILL

ORDER ALLOWING CERTIORARI

Filed May 22, 1978

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.